

By: Armbrister

S.B. No. 1279

A BILL TO BE ENTITLED

AN ACT

relating to technical changes to taxes and fees administered by the
comptroller of public accounts.

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

SECTION 1. Section 161.122, Health and Safety Code, is
amended by adding Subsection (f) to read as follows:

(f) A person commits an offense if the person places or
authorizes the placement of a sign in a location that is in
violation of this section. An offense under this subsection is a
Class C misdemeanor.

SECTION 2. Article 1.16(b), Insurance Code, is amended to
read as follows:

(b) Assessments for the expenses of such domestic
examination which shall be sufficient to meet all the expenses and
disbursements necessary to comply with the provisions of the laws
of Texas relating to the examination of insurance companies and to
comply with the provisions of this Article and Articles 1.17 and
1.18 of this Code, shall be made by the State Board of Insurance
upon the corporations or associations to be examined taking into
consideration annual premium receipts, and/or admitted assets that
are not attributable to 90 percent of pension plan contracts as
defined in Section 818(a) of the Internal Revenue Code of 1986 (26
U.S.C. Section 818(a)), and/or insurance in force; provided such
assessments shall be made and collected as follows: (1) expenses

1 attributable directly to a specific examination including
2 employees' salaries and expenses and expenses provided by Article
3 1.28 of this Code shall be collected at the time of examination; (2)
4 assessments calculated annually for each corporation or
5 association which take into consideration annual premium receipts,
6 and/or admitted assets that are not attributable to 90 percent of
7 pension plan contracts as defined in Section 818(a) of the Internal
8 Revenue Code of 1986 (26 U.S.C. Section 818(a)), and/or insurance
9 in force shall be assessed annually for each such corporation or
10 association. In computing the assessments, the board may not
11 consider insurance premiums for insurance contracted for by a state
12 or federal governmental entity to provide welfare benefits to
13 designated welfare recipients or contracted for in accordance with
14 or in furtherance of Title 2, Human Resources Code, or the federal
15 Social Security Act (42 U.S.C. Section 301 et seq.). The amount of
16 all examination and evaluation fees ~~[the assessments]~~ paid in each
17 taxable year to ~~[or for the use of]~~ the State of Texas by an ~~[any]~~
18 insurance carrier ~~[corporation or association hereby affected]~~
19 shall be allowed as a credit on the amount of premium taxes due
20 under this article ~~[to be paid by any such insurance corporation or~~
21 ~~association for such taxable year except as provided by Article~~
22 ~~1.28 of this Code]~~. The limitations provided in Article 1.28, Sec.
23 2 (a) (2) and (3) for domestic insurance companies apply to foreign
24 insurance companies.

25 SECTION 3. Section 1, Article 4.10, Insurance Code, is
26 amended to read as follows:

27 Sec. 1. Every insurance carrier, including Lloyd's and

reciprocal or inter-insurance exchanges and any other organization or concern receiving gross premiums from the business of fire, marine, marine inland, accident, credit, livestock, fidelity, guaranty, surety, casualty, workers' compensation, employers' liability, or any other kind or character of insurance, except title insurance and except as provided in Sections 2, 3, and 4 of this article, shall pay to the comptroller a tax upon such gross premium receipts as provided in this article. Any such insurance carrier doing other kinds of insurance business shall pay the tax levied upon its gross premiums received from such other kinds of business as provided in Articles 4.03 and 4.11 of this code.

SECTION 4. Section 13, Article 4.10, Insurance Code, is amended to read as follows:

Sec. 13. The amount of all examination and evaluation fees paid in each taxable year to ~~[or for the use of]~~ the State of Texas by an insurance carrier shall be allowed as a credit on the amount of premium taxes due under this article ~~[except as provided by Article 1.28 of this code]~~. The limitations provided in Article 1.28, Sec. 2(a)(2) and (3) for domestic insurance companies apply to foreign insurance companies. Any credit allowed by the provisions of this section is in addition to any other credits allowable by statute.

SECTION 5. Section 8, Article 4.11, Insurance Code, is amended to read as follows:

Sec. 8. The amount of all examination and evaluation ~~[valuation]~~ fees paid in ~~[during]~~ each taxable ~~[tax]~~ year to ~~[or for the use of]~~ the State of Texas by an insurance carrier shall be

1 allowed as a credit on the amount of premium taxes due under this
 2 article [~~except as provided by Article 1.28 of this code~~]. The
 3 limitations provided in Article 1.28, Sec. 2(a)(2) and (3) for
 4 domestic insurance companies apply to foreign insurance companies.
 5 Any credit allowed by the provisions of this section is in addition
 6 to any other credits allowable by statute.

7 SECTION 6. Article 4.17(a), Insurance Code, is amended to
 8 read as follows:

9 (a) The commissioner shall annually determine the rate of
 10 assessment of a maintenance tax to be paid on an annual, semiannual,
 11 or other periodic basis, as determined by the comptroller. The rate
 12 of assessment may not exceed .04 percent of the correctly reported
 13 gross premiums of life, health, and accident insurance coverages
 14 and the gross considerations for annuity and endowment contracts
 15 collected by all authorized insurers writing life, health, and
 16 accident insurance, annuity, or endowment contracts in this state.
 17 The comptroller shall collect the maintenance tax. For purposes of
 18 this article, the gross premiums on which an assessment is based may
 19 not include premiums received from this state or the United States
 20 for insurance contracted for by this state or the United States for
 21 the purpose of providing welfare benefits to designated welfare
 22 recipients or for insurance contracted for by this state or the
 23 United States in accordance with or in furtherance of Title 2, Human
 24 Resources Code, or the federal Social Security Act (42 U.S.C.
 25 Section 301 et seq.). The gross premiums receipts so reported shall
 26 not include the amount of premiums paid on group health, accident,
 27 and life policies in which the group covered by the policy consists

1 of a single nonprofit trust established to provide coverage
2 primarily for employees of:

3 (1) a municipality, county, or hospital district in
4 this state; or

5 (2) a county or municipal hospital, without regard to
6 whether the employees are employees of the county or municipality
7 or another entity operating the hospital on behalf of the county or
8 municipality.

9 SECTION 7. Section 7, Article 9.59, Insurance Code, is
10 amended to read as follows:

11 Sec. 7. The amount of all examination and evaluation fees
12 paid in each taxable year to ~~[or for the use of]~~ the State of Texas
13 by a title insurance company shall be allowed as a credit on the
14 amount of premium taxes due under this article ~~[except as provided~~
15 ~~by Article 1.28 of this code]~~. The limitations provided in
16 Article 1.28, Sec. 2(a)(2) and (3) for domestic insurance companies
17 apply to foreign insurance companies. Any credit allowed by this
18 section is in addition to any other credits allowed by law.

19 SECTION 8. Article 17.22(a), Insurance Code, is amended to
20 read as follows:

21 (a) County mutual insurance companies shall be exempt from
22 the operation of all insurance laws of this state, except such laws
23 as are made applicable by their specific terms or as in this Chapter
24 specifically provided. In addition to such other Articles as may be
25 made to apply by other Articles of this Code, county mutual
26 insurance companies shall be subject to:

27 (1) Subdivision 7 of Article 1.10 of this Code; and

(2) Articles 1.15, 1.15A, 1.16, 1.24, 1.35B, 2.04, 2.05, 2.08, 2.10, 4.10, 5.12, 5.37, 5.38, 5.39, 5.40, 5.49, 21.21, and 21.49 of this Code.

SECTION 9. Section (b), Article 20A.32, Insurance Code, is amended to read as follows:

(b)(1) A credit against the amount of premium taxes to be paid by the health maintenance organization in a taxable year may not be allowed on:

(A) expenses directly attributable to an examination of the books, records, accounts, or principal offices of a health maintenance organization located outside this state;

(B) examination expenses or fees paid to a state other than this state; or

(C) examination fees paid in a different taxable year.

(2) Subdivisions (1)(A), (B), and (C) apply to domestic health maintenance organizations, and only subdivisions (1)(B) and (C) apply to foreign health maintenance organizations.

SECTION 10. Article 20A.33(d), Insurance Code, is amended to read as follows:

(d) The commissioner shall annually determine the rate of assessment of a per capita maintenance tax to be paid on an annual or semiannual basis, on the correctly reported gross revenues for the issuance of health maintenance certificates or contracts collected by all authorized health maintenance organizations issuing such coverages in this state. The rate of assessment may not exceed \$2 for each enrollee. The rate of assessment may differ

between basic health care plans, limited health care service plans, and single health care service plans and shall equitably reflect any differences in regulatory resources attributable to each type of plan. The comptroller shall collect the maintenance tax. For purposes of this section, the amount of maintenance tax assessed may not be computed on enrollees who as individual certificate holders or their dependents are covered by a master group policy paid for by revenues received from this state or the United States for insurance contracted for by this state or the United States for the purpose of providing welfare benefits to designated welfare recipients or for insurance contracted for by this state or the United States in accordance with or in furtherance of Title 2, Human Resources Code, or the federal Social Security Act (42 U.S.C. Section 301 et seq.). The gross premiums receipts so reported shall not include the amount of premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of:

(1) a municipality, county, or hospital district in this state; or

(2) a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or another entity operating the hospital on behalf of the county or municipality.

SECTION 11. Section 101.053(b), Insurance Code, is amended to read as follows:

(b) Sections 101.051 and 101.052 do not apply to:

1 (1) the lawful transaction of surplus lines insurance
2 under Chapter 981;

3 (2) the lawful transaction of reinsurance by insurers;

4 (3) a transaction in this state that:

5 (A) involves a policy that:

6 (i) is lawfully solicited, written, and
7 delivered outside this state; and

8 (ii) covers, at the time the policy is
9 issued, only subjects of insurance that are not resident, located,
10 or expressly to be performed in this state; and

11 (B) takes place after the policy is issued;

12 (4) a transaction:

13 (A) that involves an insurance contract
14 independently procured by the insured from an insurance company not
15 authorized to do insurance business in this state through
16 negotiations occurring entirely outside this state;

17 (B) that is reported; and

18 (C) on which premium tax is paid in accordance
19 with this chapter;

20 (5) a transaction in this state that:

21 (A) involves group life, health, or accident
22 insurance, other than credit insurance, and group annuities in
23 which the master policy for the group was lawfully issued and
24 delivered in a state in which the insurer or person was authorized
25 to do insurance business; and

26 (B) is authorized by a statute of this state;

27 (6) an activity in this state by or on the sole behalf

1 of a nonadmitted captive insurance company that insures solely:

2 (A) directors' and officers' liability insurance
3 for the directors and officers of the company's parent and
4 affiliated companies;

5 (B) the risks of the company's parent and
6 affiliated companies; or

7 (C) both the individuals and entities described
8 by Paragraphs (A) and (B);

9 (7) the issuance of a qualified charitable gift
10 annuity under Chapter 102; or

11 (8) a lawful transaction by a servicing company of the
12 Texas workers' compensation employers' rejected risk fund under
13 Section 4.08, Article 5.76 2, as that article existed before its
14 repeal.

15 SECTION 12. Section 376.470, Local Government Code, as
16 added by Chapter 1433, Acts of the 77th Legislature, Regular
17 Session, 2001 is amended by adding Subsection (d) to read as
18 follows:

19 (d) Chapter 321, Tax Code, applies to the imposition,
20 computation, administration, enforcement, and collection of the
21 sales and use tax imposed by this section except to the extent it is
22 inconsistent with the provisions of this chapter.

23 SECTION 13. Section 2153.153(a), Occupations Code, is
24 amended to read as follows:

25 (a) A license applicant must file with the comptroller a
26 license application that:

27 (1) contains a complete statement about the ownership

of the business that is the subject of the application, including:

(A) the nature of the business entity; and

(B) except as provided by Subsection (b), the name and residence address of each person who has a financial interest in the business, including the nature, type, and extent of the interest;

(2) designates:

(A) an individual, as described by Subsection (c), responsible for maintaining a record of and reporting to the comptroller information as required by Section 2153.202; and

(B) an office located in this state where the applicant proposes to maintain the records required by this chapter, a rule adopted under this chapter, or other law;

(3) is accompanied by:

(A) a written statement executed by the individual designated under Subdivision (2) that the individual accepts the responsibility described by that subdivision; and

(B) a cashier's check, ~~or~~ money order, personal check, or other method of payment authorized by the comptroller in an amount equal to the annual license fee under Section 2153.154;

(4) includes any other relevant information required by the comptroller; and

(5) states that the information contained in the application is true and correct.

SECTION 14. Section 111.0046, Tax Code, is amended to read as follows:

Sec. 111.0046. REFUSAL TO PERMIT OR LICENSE. (a) The

1 comptroller shall refuse to issue or renew any permit or license to
2 a person who:

3 (1) is not permitted or licensed as required by law for
4 a different tax or activity administered by the comptroller, except
5 if the issuance or renewal of such license or permit is pending
6 before the comptroller; or

7 (2) is currently delinquent in the payment of any tax
8 collected by the comptroller.

9 (b) The comptroller may establish by rule the minimum age
10 for a person who may apply for a permit or license issued by the
11 comptroller.

12 SECTION 15. Sections 111.012(a) and (g), Tax Code, are
13 amended to read as follows:

14 (a) If the comptroller finds that a tax imposed by this
15 title is insecure, the comptroller may require a taxpayer [~~who is~~
16 ~~delinquent in the payment of the tax~~] to:

17 (1) provide security for the payment of taxes; or

18 (2) establish a tax escrow account at a bank or
19 other financial institution.

20 (g) If a taxpayer does not furnish security to the
21 comptroller or establish a tax escrow account as required by the
22 comptroller before the expiration of 10 days following the day on
23 which notice is received, the comptroller may:

24 (1) bring suit in district court in Travis County for
25 an order enjoining the taxpayer from engaging in business until the
26 security is furnished or the tax escrow account is established[~~-~~
27 ~~Venue for a suit under this section is in Travis County.~~]; or

1 (2) pursue any other remedies or collection actions
2 available to the comptroller under the provisions of Chapter 111 or
3 113 to assure the security is furnished or the tax escrow account is
4 established.

5 SECTION 16. Section 113.006(b), Tax Code, is amended to
6 read as follows:

7 (b) One tax lien notice is sufficient to cover all taxes of
8 any ~~[the same]~~ nature administered by the comptroller, including
9 penalty and interest computed by reference to the amount of tax,
10 that may have accrued before or after the filing of the notice.

11 SECTION 17. Section 151.0035, Tax Code, is amended to read
12 as follows:

13 Sec. 151.0035. "DATA PROCESSING SERVICE." "Data processing
14 service" includes word processing, data entry, data retrieval, data
15 search, information compilation, payroll and business accounting
16 data production, the performance of a totalisator service with the
17 use of computational equipment ~~[equipment]~~ required by the Texas
18 Racing Act (Article 179e, Vernon's Texas Civil Statutes), and other
19 computerized data and information storage or manipulation. "Data
20 processing service" also includes the use of a computer or computer
21 time for data processing whether the processing is performed by the
22 provider of the computer or computer time or by the purchaser or
23 other beneficiary of the service. "Data processing service" does
24 not include the transcription of medical dictation by a medical
25 transcriptionist. Data storage does not include classified
26 advertisements, banner advertisements, vertical advertisements, or
27 links when these items are displayed on an internet web page owned

1 by another.

2 SECTION 18. Section 151.005, Tax Code, is amended to read
3 as follows:

4 Sec. 151.005. "SALE" OR "PURCHASE." "Sale" or "purchase"
5 means any of the following when done or performed for
6 consideration:

7 (1) a transfer of title or possession of tangible
8 personal property;

9 (2) the exchange, barter, lease, or rental of tangible
10 personal property;

11 (3) the performance of a taxable service, the charge
12 for an extended warranty or service contract for the performance of
13 a taxable service, or, in the case of an amusement service, a
14 transfer of title to or possession of a ticket or other admission
15 document, the collection of an admission fee, whether by individual
16 performance, subscription series, or membership privilege, the
17 collection of dues or a fee, charge, or assessment, including an
18 initiation fee, by a club or organization for membership or a
19 special privilege, status, or membership classification in the club
20 or organization, or the use of a coin-operated machine;

21 (4) the production, fabrication, processing,
22 printing, or imprinting of tangible personal property for consumers
23 who directly or indirectly furnish the materials used in the
24 production, fabrication, processing, printing, or imprinting;

25 (5) the furnishing and distribution of tangible
26 personal property by a social club or fraternal organization to
27 anyone;

1 (6) the furnishing, preparation, or service of food,
2 meals, or drinks;

3 (7) a transfer of the possession of tangible personal
4 property if the title to the property is retained by the seller as
5 security for the payment of the price; or

6 (8) a transfer of the title or possession of tangible
7 personal property that has been produced, fabricated, or printed to
8 the special order of the customer.

9 SECTION 19. Section 151.056(f), Tax Code, is added to read
10 as follows:

11 (f) A contractor is not eligible for the exemptions provided
12 in Section 151.318 on items used in the performance of contracts to
13 improve real property.

14 SECTION 20. Section 151.313(a), Tax Code, is amended to read
15 as follows:

16 (a) The following items are exempted from the taxes imposed
17 by this chapter:

18 (1) a drug or medicine, other than insulin, if
19 prescribed or dispensed for a human or animal by a licensed
20 practitioner of the healing arts;

21 (2) insulin;

22 (3) subject to Subsection (c), a drug or medicine,
23 without regard to whether it is prescribed or dispensed by a
24 licensed practitioner of the healing arts;

25 (4) a hypodermic syringe or needle;

26 (5) a brace; hearing aid or audio loop; orthopedic,
27 dental, or prosthetic device; ileostomy, colostomy, or ileal

1 bladder appliance; or supplies or replacement parts for the listed
2 items;

3 (6) a therapeutic appliance, device, and any related
4 supplies specifically designed for those products, if dispensed or
5 prescribed by a licensed practitioner of the healing arts, when
6 those items are purchased and used by an individual for whom the
7 items listed in this subdivision were dispensed or prescribed;

8 (7) corrective lens and necessary and related
9 supplies, if dispensed or prescribed by an ophthalmologist or
10 optometrist;

11 (8) specialized printing or signalling equipment used
12 by the deaf for the purpose of enabling the deaf to communicate
13 through the use of an ordinary telephone and all materials, paper,
14 and printing ribbons used in that equipment;

15 (9) a braille wristwatch, braille writer, braille
16 paper and braille electronic equipment that connects to computer
17 equipment, and the necessary adaptive devices and adaptive computer
18 software;

19 (10) each of the following items if purchased for use
20 by the blind to enable them to function more independently: a slate
21 and stylus, print enlarger, light probe, magnifier, white cane,
22 talking clock, large print terminal, talking terminal, or harness
23 for guide dog;

24 (11) hospital beds;

25 (12) blood glucose monitoring test strips;

26 (13) an adjustable eating utensil used to facilitate
27 independent eating if purchased for use by a person, including a

1 person who is elderly or physically disabled, has had a stroke, or
2 is a burn victim, who does not have full use or control of the
3 person's hands or arms; ~~and~~

4 (14) subject to Subsection (d), a dietary supplement;
5 and

6 (15) intravenous systems, supplies, and replacement
7 parts used in the treatment of humans.

8 SECTION 21. Section 151.314(e), Tax Code, is amended to
9 read as follows:

10 (e) Food products, candy, carbonated beverages, and diluted
11 juices are exempted from the taxes imposed by this chapter if sold
12 at an exempt sale qualifying under this subsection or if stored or
13 used by the purchaser of the item at the exempt sale. A sale is
14 exempted under this subsection if:

15 (1) the sale is made by a ~~[person under 19 years old~~
16 ~~who is a]~~ member of or volunteer for a nonprofit organization
17 devoted to the exclusive purpose of education or religious or
18 physical training or by a group associated with a public or private
19 elementary or secondary school;

20 (2) the sale is made as a part of a fund-raising drive
21 sponsored by the organization or group; and

22 (3) all net proceeds from the sale go to the
23 organization or group for its exclusive use.

24 SECTION 22. Section 151.319(f), Tax Code, is amended to
25 read as follows:

26 (f) In this section, "newspaper" means a publication that is
27 printed on newsprint, the average sales price of which for each copy

1 over a 30-day period does not exceed \$1.50 [~~75 cents~~], and that is
2 printed and distributed at a daily, weekly, or other short interval
3 for the dissemination of news of a general character and of a
4 general interest. "Newspaper" does not include a magazine,
5 handbill, circular, flyer, sales catalog, or similar printed item
6 unless the printed item is printed for distribution as a part of a
7 newspaper and is actually distributed as a part of a newspaper. For
8 the purposes of this section, an advertisement is news of a general
9 character and of a general interest. Notwithstanding any other
10 provision of this subsection, "newspaper" includes:

11 (1) a publication containing articles and essays of
12 general interest by various writers and advertisements that is
13 produced for the operator of a licensed and certified carrier of
14 persons and distributed by the operator to its customers during
15 their travel on the carrier; and

16 (2) a publication for the dissemination of news of a
17 general character and of a general interest that is printed on
18 newsprint and distributed to the general public free of charge at a
19 daily, weekly, or other short interval.

20 SECTION 23. Section 151.323, Tax Code, is amended to read
21 as follows:

22 (a) There are exempted from the taxes imposed by this
23 chapter the receipts from the sale, use, or other consumption in
24 this state of:

25 (1) long-distance telecommunications services that
26 are not both originated from and billed to a telephone number or
27 billing or service address within Texas;

1 (2) access to a local exchange telephone company's
2 network by a regulated provider of telecommunications services;
3 and

4 (3) broadcasts, other than cable television service,
5 by commercial radio or television stations licensed or regulated by
6 the Federal Communications Commission.

7 (b) The exemption provided in this section does not apply to
8 mobile telecommunications services.

9 SECTION 24. Section 151.3501, Tax Code, is added to read as
10 follows:

11 Sec. 151.3501. LABOR TO RESTORE, REPAIR, OR REMODEL
12 HISTORIC SITES. (a) Labor to restore, repair, or remodel an
13 improvement to real property is exempted from the taxes imposed by
14 this chapter if:

15 (1) the amount of the charge for labor is separately
16 itemized; and

17 (2) the restoration, repair, or remodeling is
18 performed on an improvement to real property listed in the National
19 Register of Historic Places.

20 (b) The exemption provided in this section does not apply to
21 tangible personal property transferred by the service provider to
22 the purchaser as part of the service.

23 SECTION 25. Section 151.355, Tax Code, as added by Acts
24 2001, 77th Leg., ch. 1234, Section 39, is amended to read as
25 follows:

26 The following are exempted from taxes imposed by this
27 chapter:

1 (1) rainwater harvesting equipment or supplies, water
2 recycling and reuse equipment or supplies, or other equipment,
3 services, or supplies used solely to reduce or eliminate water use;

4 (2) equipment, services, or supplies used solely for
5 desalination of surface water or groundwater;

6 (3) equipment services, or supplies, used solely for
7 brush control designed to enhance the availability of water;

8 (4) equipment, services, or supplies used solely in
9 precipitation enhancement;

10 (5) equipment, services or supplies used solely to
11 construct or operate a water or wastewater system certified by the
12 Texas Natural Resource Conservation Commission as a regional
13 system; and

14 (6) equipment, services or supplies used solely to
15 construct or operate a water supply or wastewater system by a
16 private entity as a public-private partnership as certified by the
17 political subdivision that is a party to the project.

18 SECTION 26. Section 152.086(a), Tax Code, is amended to
19 read as follows:

20 (a) The taxes imposed by this chapter do not apply to the
21 sale or use of a motor vehicle that:

22 (1) has been or will be modified within two years of
23 purchase for the transportation of an orthopedically handicapped
24 person; and

25 (2) is driven by or used for the transportation of an
26 orthopedically handicapped person.

27 SECTION 27. Subchapter F, Chapter 152, Tax Code, is amended

by adding Section 152.106 to read as follows:

Sec. 152.106. PROHIBITED ADVERTISING; CRIMINAL PENALTY (a)
A person who is required by Chapter 503, Transportation Code, to
hold a dealer's general distinguishing number commits an offense if
the person directly or indirectly advertises, holds out, or states
to a customer or to the public that the person:

(1) will assume, absorb, or refund a part of the tax;
or

(2) will not add the tax to the sales price of the
motor vehicle sold, leased or rented.

(b) An offense under this section is a Class C misdemeanor
punishable by a fine of not more than \$500.

SECTION 28. Section 153.013(a), Tax Code, is amended to
read as follows:

(a) A distributor, supplier, dealer, interstate trucker,
jobber, dyed diesel fuel bonded user, ~~[or]~~ agricultural bonded
user, or other user who fails to keep a record, issue an invoice, or
file a report required by this chapter, is presumed to have sold or
used for taxable purposes all motor fuel shown by an audit by the
comptroller to have been sold to the distributor, supplier, dealer,
interstate trucker, jobber, dyed diesel fuel bonded user, ~~[or]~~
agricultural bonded user, or other user. Motor fuel unaccounted
for is presumed to have been sold or used for taxable purposes. The
comptroller may fix or establish the amount of taxes, penalties,
and interest due the state from the records of deliveries or from
any records or information available to him. If a tax claim, as
developed from this procedure, is not paid, after the opportunity

to request a redetermination, the claim and any audit made by the comptroller or any report filed by the distributor, supplier, dealer, interstate trucker, jobber, dyed diesel fuel bonded user, ~~[or]~~ agricultural bonded user, or other user, are evidence in any suit or judicial proceedings filed by the attorney general, and are prima facie evidence of the correctness of the claim or audit. A prima facie presumption of the correctness of the claim may be overcome at the trial by evidence adduced by the distributor, supplier, dealer, interstate trucker, jobber, dyed diesel fuel bonded user, ~~[or]~~ agricultural bonded user, or other user.

SECTION 29. Section 153.117, Tax Code, is amended by adding subsection (i), to read as follows:

(i) a user who files a claim for refund shall keep a record showing the number of gallons of:

(1) all gasoline purchased or received, showing the name of the seller and date of purchase;

(2) all gasoline deliveries into the fuel supply tanks of motor vehicles;

(3) gasoline used for other purposes, showing the purpose for which used;

(4) all gasoline lost by fire, theft, or accident; and

(5) a distribution log if used by a bulk user for documentation to support a refund claim.

SECTION 30. Section 153.120, Tax Code, is amended by adding subsection (d) to read as follows:

(d) A distribution log filed with the comptroller to support the number of gallons of gasoline removed from a user's own bulk

1 storage, must contain the name and address of the bulk user making
2 the delivery stamped or preprinted on it and for each individual
3 delivery from the bulk storage the following:

- 4 (1) the date;
5 (2) the number of gallons of gasoline;
6 (3) signature of user; and
7 (4) the type or description of off-highway equipment
8 into which the gasoline is delivered, or the type of licensed motor
9 vehicle into which the gasoline is delivered, including but not
10 limited to, state highway license plate number or vehicle
11 identification number, and odometer or hubmeter reading.

12 SECTION 31. Section 153.205, Tax Code, is added to read as
13 follows:

14 Sec. 153.205. STATEMENT FOR PURCHASE OF DIESEL FUEL TAX
15 FREE. (a) The first sale or use of diesel fuel in this state is
16 taxable, except that sales of dyed diesel fuel, or of undyed diesel
17 fuel if the fuel will be used for an agricultural nonhighway
18 purpose, may be made without collecting the tax if the purchaser
19 furnishes to a permitted supplier a signed statement, including an
20 end user number or agricultural exemption number issued by the
21 comptroller. A person who wants to use a signed statement to
22 purchase dyed diesel fuel must apply to the comptroller for an end
23 user number to be used in conjunction with a signed statement. A
24 person who wants to use a signed statement to purchase dyed or
25 undyed diesel fuel for an agricultural nonhighway purpose must
26 apply to the comptroller for an agricultural exemption number to be
27 used in conjunction with a signed statement. A supplier may not make

1 a tax-free sale of any diesel fuel to a purchaser using a signed
2 statement unless the purchaser has an end user number or
3 agricultural exemption number issued by the comptroller under this
4 section.

5 (b) A sale of dyed diesel fuel may be made without
6 collecting the tax if the purchaser furnishes to a permitted
7 supplier a signed statement, including an end user number issued by
8 the comptroller, that stipulates that:

9 (1) all of the diesel fuel purchased on the signed
10 statement will be dyed diesel fuel;

11 (2) all of the dyed diesel fuel purchased on the signed
12 statement will be consumed by the purchaser and will not be resold;
13 and

14 (3) none of the dyed diesel fuel purchased on the
15 signed statement will be delivered or permitted to be delivered
16 into the fuel supply tank of a motor vehicle operated on the public
17 highways of this state.

18 (c) A sale of dyed or undyed diesel fuel for an agricultural
19 nonhighway use may be made without collecting the tax if the
20 purchaser furnishes to a permitted supplier a signed statement,
21 including an agricultural exemption number issued by the
22 comptroller, that stipulates that:

23 (1) all of the dyed and undyed diesel fuel purchased on
24 the signed statement will be used exclusively in agricultural
25 nonhighway equipment;

26 (2) all of the dyed and undyed diesel fuel purchased on
27 the signed statement will be consumed by the purchaser and will not

1 be resold; and

2 (3) none of the dyed or undyed diesel fuel purchased on
3 the signed statement will be delivered or permitted to be delivered
4 into the fuel supply tank of a motor vehicle operated on the public
5 highways of this state.

6 (d) A person may not make a tax-free purchase or a permitted
7 supplier may not make a tax-free sale to a purchaser of any diesel
8 fuel under this section using a signed statement:

9 (1) for the purchase or the sale of more than 7,400
10 gallons of dyed or undyed diesel fuel in a single delivery; or

11 (2) in a calendar month in which the person has
12 previously purchased from all sources or the permitted supplier has
13 previously sold to that purchaser more than:

14 (A) 10,000 gallons of dyed diesel fuel;

15 (B) 25,000 gallons of dyed diesel fuel if the
16 purchaser stipulates in the signed statement that all of the fuel
17 will be consumed by the purchaser in the original production or to
18 increase the production of oil or gas and furnishes the supplier
19 with a letter of exception issued by the comptroller; or

20 (C) 25,000 gallons of dyed or undyed diesel fuel
21 if purchased for agricultural purposes by a person who furnishes to
22 the permitted supplier, in conjunction with the signed statement,
23 an agricultural exemption number issued by the comptroller.

24 (e) Any gallons purchased or sold in excess of the
25 limitations prescribed by Subsection (d) constitute a taxable
26 purchase or sale. The purchaser paying the tax on dyed or undyed
27 diesel fuel in excess of the limitations prescribed by Subsection

1 (d) may claim a refund of the tax paid on any dyed or undyed diesel
2 fuel used for nonhighway purposes under Section 153.222.

3 (f) The signed statement and end user number or agricultural
4 exemption number from the purchaser as provided by this section
5 relieves the permitted supplier from the burden of proof that the
6 sale of dyed diesel fuel or of undyed diesel fuel for an
7 agricultural nonhighway purpose was not taxable to the purchaser
8 and remains in effect unless:

9 (1) the statement is revoked in writing by the
10 purchaser or supplier;

11 (2) the comptroller notifies the supplier in writing
12 that the purchaser may no longer make tax-free purchases; or

13 (3) the supplier is put on notice by making taxable
14 sales of dyed diesel fuel to a purchaser who has previously
15 furnished a signed statement to this supplier. The supplier is not
16 put on notice when taxable sales of dyed diesel fuel are made in
17 accordance with subsections (e) of this section.

18 (g) The statement must be signed by the purchaser or his
19 representative.

20 (h) The comptroller's regulations may allow separate
21 operating divisions of corporations to give separate signed
22 statements as if they were different legal entities.

23 (i) The comptroller may promulgate necessary forms and
24 rules to administer and enforce this section.

25 (j) A taxable use of any part of the dyed or undyed diesel
26 fuel purchased under a signed statement shall, in addition to any
27 criminal penalty, forfeit the right of the person to purchase dyed

or undyed diesel fuel tax free for a period of one year from the date of the offense, and any tax, interest, and penalty found to be due through false or erroneous execution or continuance of a promissory statement by the purchaser, if assessed to the supplier, is a debt of the purchaser to the supplier until paid, and is recoverable at law in the same manner as the purchase price of the fuel. The person may, however, claim a refund of the tax paid on any dyed or undyed diesel fuel used for nonhighway purposes under Section 153.222.

SECTION 32. Section 153.208(d), Tax Code, is amended to read as follows:

(d) A supplier may not make a tax-free sale or delivery of diesel fuel into the fuel supply tanks of a motor vehicle other than a motor vehicle owned by the United States, a motor vehicle exclusively operated by a public school district in this state, or a motor vehicle operated by a commercial transportation company that provides public school transportation services to a school district in this state under Section 34.008, Education Code, that is used by the company exclusively to provide those services.

SECTION 33. Section 153.219(c), Tax Code, is amended to read as follows:

(c) A dyed diesel fuel bonded user, an agricultural bonded user, or other user ~~[with nonhighway equipment uses]~~ who files a claim for a refund shall keep a record showing the number of gallons of:

(1) inventories of all diesel fuel on hand at the first of each month;

(2) all diesel fuel purchased or received, showing the

1 name of the seller and the date of each purchase;

2 (3) all diesel fuel deliveries into the fuel supply
3 tanks of motor vehicles;

4 (4) diesel fuel used for other purposes, showing the
5 purpose for which used; ~~[and]~~

6 (5) all diesel fuel lost by fire, theft, or accident;
7 and

8 (6) a distribution log if used by a bulk user for
9 documentation to support a refund claim.

10 SECTION 34. Section 153.222(a), Tax Code, is amended to
11 read as follows:

12 (a) A dealer or diesel fuel jobber who has paid tax on diesel
13 fuel that has been used or sold for use by the dealer or diesel fuel
14 jobber for any purpose except in a vehicle operated or intended to
15 be operated ~~[other than propelling a motor vehicle]~~ on the public
16 highways ~~[of this state]~~ or that has been sold to the United States
17 or a public school district in this state for the exclusive use of
18 the purchaser, or to a commercial transportation company for
19 exclusive use in providing public school transportation services to
20 a school district under Section 34.008, Education Code, without
21 adding the amount of the tax to his selling price, and a user who has
22 paid tax on any diesel fuel that has been used by him for any ~~[a]~~
23 purpose except in a vehicle operated or intended to be operated
24 ~~[other than propelling a motor vehicle]~~ on the public highways, is a
25 public school district and has paid the tax on diesel fuel purchased
26 for its exclusive use, is a commercial transportation company and
27 has paid the tax on diesel fuel used by the company exclusively to

1 provide public school transportation services to a school district
2 under Section 34.008, Education Code, or is a person who has paid
3 tax on diesel fuel used in a commercial motor vehicle as provided by
4 Section 153.203(10) may file a claim for a refund of taxes paid,
5 less the deduction allowed vendors.

6 SECTION 35. Section 153.223, Tax Code, is amended by adding
7 subsection (d) to read as follows:

8 (d) A distribution log filed with the comptroller to support
9 the number of gallons of diesel fuel removed from a user's own bulk
10 storage, must contain the name and address of the bulk user making
11 the delivery stamped or preprinted on it and for each individual
12 delivery from the bulk storage the following:

13 (1) the date;
14 (2) the number of gallons of diesel fuel;
15 (3) signature of the user; and
16 (4) the type or description of off-highway equipment
17 into which the diesel fuel is delivered, or the type of licensed
18 motor vehicle into which the diesel fuel is delivered, including
19 but not limited to, state highway license plate number or vehicle
20 identification number, and odometer or hubmeter reading.

21 SECTION 36. Section 153.403, Tax Code, is amended to read as
22 follows:

23 Sec. 153.403. CRIMINAL OFFENSES. Except as provided by
24 Section 153.404, a person commits an offense if the person:

25 (1) refuses to stop and permit the inspection and
26 examination of a motor vehicle transporting or using motor fuel on
27 demand of a peace officer or the comptroller;

1 (2) is required to hold a valid trip permit or
2 interstate trucker's permit, but operates a motor vehicle in this
3 state without a valid trip permit or interstate trucker's permit;

4 (3) operates a liquefied gas-propelled motor vehicle
5 that is required to be licensed in Texas, including a motor vehicle
6 equipped with dual carburetion, and does not display a current
7 liquefied gas tax decal or multistate fuels tax agreement decal;

8 (4) transports gasoline or diesel fuel in any cargo
9 tank that has a connection by pipe, tube, valve, or otherwise with
10 the fuel injector or carburetor or with the fuel supply tank feeding
11 the fuel injector or carburetor of the motor vehicle transporting
12 the product;

13 (5) sells or delivers gasoline or diesel fuel from a
14 fuel supply tank that is connected with the fuel injector or
15 carburetor of a motor vehicle;

16 (6) owns or operates a motor vehicle for which reports
17 or mileage records are required by this chapter without an
18 operating odometer or other device in good working condition to
19 record accurately the miles traveled;

20 (7) as a diesel tax prepaid user fails to prepay the
21 tax on every diesel-powered motor vehicle owned or operated by him;

22 (8) uses dyed diesel fuel[~~on which a tax is required~~
23 ~~to be paid,~~] for the operation of a motor vehicle on a public
24 highway, unless such use is permitted by another provision of this
25 chapter;

26 (9) makes a tax-free sale or delivery of liquefied gas
27 into the fuel supply tank of a motor vehicle that does not display a

1 current Texas liquefied gas tax decal;

2 (10) makes a sale or delivery of liquefied gas on which
3 the person knows the tax is required to be collected, if at the time
4 the sale is made the person does not hold a valid dealer's permit;

5 (11) makes a tax-free sale or delivery of liquefied
6 gas into the fuel supply tank of a motor vehicle bearing
7 out-of-state license plates;

8 (12) makes a delivery of liquefied gas into the fuel
9 supply tank of a motor vehicle bearing Texas license plates and no
10 Texas liquefied gas tax decal, unless licensed under a multistate
11 fuels tax agreement;

12 (13) refuses to permit the comptroller or the attorney
13 general to inspect, examine, or audit a book or record required to
14 be kept by a distributor, supplier, dyed diesel fuel bonded user,
15 agricultural bonded user, dealer, interstate trucker, aviation
16 fuel dealer, jobber, common or contract carrier, or any person
17 required to hold a permit under this chapter;

18 (14) refuses to permit the comptroller or attorney
19 general to inspect or examine any plant, equipment, materials, or
20 premises where motor fuel is produced, processed, stored, sold,
21 delivered, or used;

22 (15) refuses to permit the comptroller, the attorney
23 general, an employee of either of those officials, a peace officer,
24 an employee of the Texas Natural Resource Conservation Commission,
25 or an employee of the Department of Agriculture to measure or gauge
26 the contents of or take samples from a storage tank or container on
27 premises where motor fuel is produced, processed, stored, sold,

1 delivered, or used;

2 (16) is a distributor, dyed diesel fuel bonded user,
3 agricultural bonded user, interstate trucker, or supplier and fails
4 or refuses to make or deliver to the comptroller a report required
5 by this chapter to be made and delivered to comptroller;

6 (17) is an importer who does not obtain an import
7 verification number when required by this chapter;

8 (18) purchases motor fuel for export, on which the tax
9 imposed by this chapter has not been paid, and subsequently diverts
10 or causes the motor fuel to be diverted to a destination in this
11 state or any other state or country other than the originally
12 designated state or country without first obtaining a diversion
13 number;

14 (19) conceals motor fuel with the intent of engaging
15 in any conduct proscribed by this chapter or refuses to make sales
16 of motor fuel on the volume-corrected basis prescribed by this
17 chapter.

18 (20) refuses, while transporting motor fuel, to stop
19 the motor vehicle he is operating when called on to do so by a person
20 authorized to stop the motor vehicle;

21 (21) refuses to surrender a motor vehicle and cargo
22 for impoundment after being ordered to do so by a person authorized
23 to impound the motor vehicle and cargo;

24 (22) mutilates, destroys, or secretes a book or record
25 required by this chapter to be kept by a distributor, supplier, dyed
26 diesel fuel bonded user, agricultural bonded user, dealer,
27 interstate trucker, aviation fuel dealer, jobber, or person

1 required to hold a permit under this chapter;

2 (23) is a distributor, supplier, dyed diesel fuel
3 bonded user, agricultural bonded user, dealer, interstate trucker,
4 aviation fuel dealer, jobber, or other person required to hold a
5 permit under this chapter, or the agent or employee of one of those
6 persons and makes a false entry or fails to make an entry in the
7 books and records required under this chapter to be made by the
8 person or fails to retain a document as required by this chapter;

9 (24) transports in any manner motor fuel under a false
10 cargo manifest or shipping document, or transports in any manner
11 motor fuel to a location without delivering at the same time a
12 shipping document relating to that shipment;

13 (25) engages in a motor fuel transaction that requires
14 that the person have a permit under this chapter without then and
15 there holding the required permit;

16 (26) makes and delivers to the comptroller a report
17 required under this chapter to be made and delivered to the
18 comptroller, if the report contains false information;

19 (27) forges, falsifies, or alters an invoice
20 prescribed by law;

21 (28) makes any statement, knowing said statement to be
22 false, in a claim for a tax refund filed with the comptroller;

23 (29) furnishes to a supplier a signed statement for
24 purchasing diesel fuel tax free and then uses the tax-free diesel
25 fuel to operate a diesel-powered motor vehicle on a public highway;

26 (30) holds an aviation fuel dealer's permit and makes a
27 taxable sale or use of any gasoline or diesel fuel;

1 (31) fails to remit any tax funds collected by a
2 distributor, supplier, dyed diesel fuel bonded user, agricultural
3 bonded user, dealer, interstate trucker, jobber, or any other
4 person required to hold a permit under this chapter;

5 (32) makes a sale of diesel fuel tax free into a
6 storage facility of a person who:

7 (A) is not permitted as a supplier, as an
8 aviation fuel dealer, as a dyed diesel fuel bonded user, as an
9 agricultural bonded user, or as a diesel tax prepaid user of diesel
10 fuel; or

11 (B) does not furnish to the permitted supplier a
12 signed statement prescribed in Section 153.205;

13 (33) makes a sale of gasoline tax free to any person
14 who is not permitted as either a distributor or an aviation fuel
15 dealer;

16 (34) is a dealer who purchases any motor fuel tax free
17 when not authorized to make a tax-free purchase under this chapter;

18 (35) is a dealer who purchases motor fuel with the
19 intent to evade any tax imposed by this chapter, or who accepts a
20 delivery of motor fuel by any means and does not at the same time
21 accept or receive a shipping document relating to the delivery;

22 (36) transports motor fuel for which a cargo manifest
23 or shipping document is required to be carried without possessing
24 or exhibiting on demand by an officer authorized to make the demand
25 a cargo manifest or shipping document containing the information
26 required to be shown on the manifest or shipping document;

27 (37) imports, sells, uses, distributes, or stores,

1 motor fuel within this state on which the taxes imposed by this
2 chapter are owed but have not been first paid to or reported by the
3 holder of a distributor, supplier, liquefied gas dealer, interstate
4 trucker, diesel tax prepaid user, dyed diesel fuel bonded user, or
5 agricultural bonded user permit;

6 (38) blends products together to produce a blended
7 fuel that is offered for sale, sold, or used that expands the volume
8 of the original product to evade paying applicable motor fuel
9 taxes; or

10 (39) evades or attempts to evade in any manner a tax
11 imposed on motor fuel by this chapter.

12 SECTION 37. Section 156.051(a), Tax Code, is amended to
13 read as follows:

14 (a) A tax is imposed on a person who, under a lease,
15 concession, permit, right of access, license, or agreement, pays
16 for the use or possession or for the right to the use or possession
17 of a room or space in a hotel costing \$15 [~~\$2~~] or more each day.

18 SECTION 38. Section 156.102(b), Tax Code, is amended to
19 read as follows:

20 (b) For purposes of this section:

21 (1) a corporation or association that is organized and
22 operated exclusively for the cleaning of beaches and that has no
23 part of its net earnings inure to the benefit of a private
24 shareholder or individual is organized and operated exclusively for
25 a charitable purpose; and

26 (2) a public or private institution of higher
27 education is organized and operated exclusively for an educational

1 purpose only if the institution is defined as a ~~[an]~~ Texas
2 institution of higher education or as a Texas private or
3 independent institution of higher education under any subdivision
4 of Section 61.003, Education Code.

5 SECTION 39. Chapter 156, Tax Code is amended by adding
6 Section 156.104 to read as follows:

7 Sec. 156.104. EXEMPTION CERTIFICATE (a) The right to use
8 or possess a room or space in a hotel is exempt from taxation under
9 this chapter if the person required to collect the tax receives, in
10 good faith from a guest, a properly completed exemption certificate
11 stating qualification for an exemption provided in Section 156.102
12 or 156.103. Any exemption claimed by the issuance of an exemption
13 certificate must be supported by the documentation required under
14 rules adopted by the comptroller.

15 (b) The comptroller shall produce and maintain a list of
16 entities that have been provided a letter of exemption under
17 Section 156.102 from the state hotel occupancy tax under that
18 section. This listing shall also be available on the comptroller's
19 Internet website. This subsection is effective January 1, 2004.

20 SECTION 40. Subsection (a), Section 171.001, Tax Code, is
21 amended to read as follows:

22 (a) A franchise tax is imposed on:

23 (1) each corporation that does business in this state
24 or that is chartered ~~[or authorized to do business]~~ in this state;
25 and

26 (2) each limited liability company that does business
27 in this state or that is organized under the laws of this state ~~[or~~

1 ~~is authorized to do business in this state~~].

2 SECTION 41. Subsection (b)(2), Section 171.001, Tax Code,
3 is amended to read as follows:

4 (2) "Beginning date" means:

5 (A) for a corporation chartered in this state,
6 the date on which the corporation's charter takes effect; and

7 (B) for a foreign corporation, ~~[the earlier of]~~
8 the date on which~~+~~

9 ~~[(i) the corporation's certificate of~~
10 ~~authority takes effect; or~~

11 ~~[(ii)]~~ the corporation begins doing
12 business in this state.

13 SECTION 42. Section 171.052, Tax Code, is amended to read
14 as follows:

15 Sec. 171.052. CERTAIN CORPORATIONS. An insurance
16 organization, title insurance company, or title insurance agent
17 authorized to engage in insurance business in this state now
18 required to pay an annual tax under Chapter 4 or 9, Insurance Code,
19 measured by its gross premium receipts is exempted from the
20 franchise tax. A ~~[An insurance organization performing management~~
21 ~~or accounting activities in this state on behalf of a]~~ nonadmitted
22 ~~[captive]~~ insurance organization ~~[company under Chapter 101,~~
23 ~~Insurance Code,~~] that is required to pay a gross premium receipts
24 tax during a tax year is exempted from the franchise tax for that
25 same tax year. Farm mutuals, local mutual aid associations, and
26 burial associations are not subject to the franchise tax.

27 SECTION 43. Section 171.1032(b), Tax Code, is amended to

1 read as follows:

2 (b) A corporation shall deduct from its gross receipts
3 computed under Subsection (a) any amount to the extent included in
4 Subsection (a) because of the application of Section 78 or Sections
5 951-964, Internal Revenue Code, any amount excludable under Section
6 171.110(k), and dividends received from a subsidiary, associate, or
7 affiliated corporation that does not transact a substantial portion
8 of its business or regularly maintain a substantial portion of its
9 assets in the United States.

10 SECTION 44. Section 171.1051(c), Tax Code, is amended to
11 read as follows:

12 (c) A corporation shall deduct from its gross receipts
13 computed under Subsection (a) any amount to the extent included in
14 Subsection (a) because of the application of Section 78 or Sections
15 951-964, Internal Revenue Code, any amount excludable under Section
16 171.110(k), and dividends received from a subsidiary, associate, or
17 affiliated corporation that does not transact a substantial portion
18 of its business or regularly maintain a substantial portion of its
19 assets in the United States.

20 SECTION 45. Section 171.106, Tax Code, is amended by adding
21 Subsection (i) to read as follows:

22 (i) Receipts from services that a defense readjustment
23 project performs in a defense economic readjustment zone are not
24 receipts from business done in this state.

25 SECTION 46. Section 171.109(a), Tax Code, is amended by
26 adding (4) to read as follows:

27 (4) A legally enforceable obligation that requires the

return of a like-kind property that was borrowed will be considered debt if it is a liability according to generally accepted accounting principles and if the return must be made within an ascertainable period of time or on demand. The amount that will be considered debt is the fair market value measured on the last day upon which the report is based as required by Section 171.153. For purpose of this subsection, "like-kind property" means the same quantity, quality and nature or character as the property borrowed.

SECTION 47. Section 171.110, Tax Code, is amended by amending subsection (a) and adding subsections (k) and (l), to read as follows:

(a) The net taxable earned surplus of a corporation is computed by:

(1) determining the corporation's reportable federal taxable income, subtracting from that amount any amount excludable under Subsection (k), any amount included in reportable federal taxable income under Section 78 or Sections 951-964, Internal Revenue Code, and 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 adding to that amount any compensation of officers or directors, or if a bank, any compensation of directors and executive officers, to the extent excluded in determining federal taxable income to determine the corporation's taxable earned surplus;

(2) apportioning the corporation's taxable earned surplus to this state as provided by Section 171.106(b) or (c), as

1 applicable, to determine the corporation's apportioned taxable
2 earned surplus;

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

5 (4) subtracting from that amount any allowable
6 deductions and any business loss that is carried forward to the tax
7 reporting period and deductible under Subsection (e).

8 (k) Dividends and interest received from federal
9 obligations are not included in earned surplus or gross receipts
10 for earned surplus purposes:

11 (1) In this section:

12 (1) "Federal obligations" means:

13 (A) stocks and other direct obligations of, and
14 obligations unconditionally guaranteed by, the United States
15 government and United States government agencies; and

16 (B) direct obligations of United States
17 government-sponsored agencies.

18 (2) "Obligation" means any bond, debenture, security,
19 mortgage-backed security, pass-through certificate, or other
20 evidence of indebtedness of the issuing entity. The term does not
21 include a deposit, a repurchase agreement, a loan, a lease, a
22 participation in a loan or pool of loans, a loan collateralized by
23 an obligation of an agency of the United States government, or a
24 loan guaranteed by an agency of the United States government.

25 (3) "United States government" means any department or
26 ministry of the federal government including a federal reserve
27 bank. The term does not include a state or local government, a

1 commercial enterprise owned in whole or in part by the United States
2 government, or a local government entity or commercial enterprise
3 whose obligations are guaranteed by the United States government.

4 (4) "United States government agency" means an
5 instrumentality of the United States government whose obligations
6 are fully and explicitly guaranteed as to the timely payment of
7 principal and interest by the full faith and credit of the United
8 States government. The term includes the Government National
9 Mortgage Association, the Veterans Administration, the Federal
10 Housing Administration, the Farmers Home Administration, the
11 Export-Import Bank, the Overseas Private Investment Corporation,
12 the Commodity Credit Corporation, the Small Business
13 Administration, and any successor agency.

14 (5) "United States government-sponsored agency" means
15 an agency originally established or chartered by the United States
16 government to serve public purposes specified by the United States
17 Congress but whose obligations are not explicitly guaranteed by the
18 full faith and credit of the United States government. The term
19 includes the Federal Home Loan Mortgage Corporation, the Federal
20 National Mortgage Association, the Farm Credit System, the Federal
21 Home Loan Bank System, and the Student Loan Marketing Association,
22 or any successor agency to any of them.

23 SECTION 48. Sections 171.110(b) and (c), Tax Code, are
24 amended to read as follows:

25 (b) Except as provided in Subsection (c), a [A] corporation
26 is not required to add the compensation of officers or directors as
27 required by Subsection (a)(1) if the corporation is:

1 (1) a corporation that has not more than 35
2 shareholders; or

3 (2) an S corporation, as that term is defined by
4 Section 1361, Internal Revenue Code.

5 (c) A subsidiary corporation may not claim the exclusion
6 under Subsection (b) if it has a parent corporation that does not
7 qualify for the exclusion. For purposes of this subsection, a
8 corporation qualifies as a parent if it ultimately controls the
9 subsidiary, even if the control arises through a series or group of
10 other subsidiaries or entities. Control is presumed if a parent
11 company directly or indirectly owns, controls, or holds a majority
12 of the outstanding voting stock of a corporation or ownership
13 interests in another entity [~~Subsection (b) does not apply to a~~
14 ~~subsidiary corporation unless it applies to the subsidiary's parent~~
15 ~~corporation~~].

16 SECTION 49. Section 171.203, Tax Code, is amended by adding
17 subsection (f) to read as follows:

18 (f) A public information report filed electronically shall
19 be deemed to satisfy the signature and certification requirement in
20 subsection (d).

21 SECTION 50. Subchapter O, Chapter 171, Tax Code, is amended
22 by adding Section 171.731 to read as follows:

23 Sec. 171.731. ASSIGNMENT PROHIBITED. A corporation may not
24 convey, assign, or transfer the credit allowed under this
25 subchapter to another entity unless all of the assets of the
26 corporation are conveyed, assigned, or transferred in the same
27 transaction.

SECTION 51. Subsections (1) and (8) of Section 171.751, Tax Code, are amended to read as follows:

(1) "Agricultural processing" means an establishment primarily engaged in activities described in categories 0724, 2011-2099, 2211, 2231, 2824, 2833, 2834, 2835, 2836, 2841, 3111-3199, 3262, or 3952, in product classes 28692 or 28698 of category 2869, or in product classes 28992 or 28994 of category 2899 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(8) "Qualified business" means an establishment primarily engaged in agricultural processing, central administrative offices, distribution, data processing, manufacturing, research and development, or warehouse. Until January 1, 2005, "qualified business" also means an establishment certified by the Texas Department of Economic Development as a qualified business under Section 2303.402 or under Section 2310.302, Government Code.

SECTION 52. Section 171.753, Tax Code, is amended to read as follows:

Sec. 171.753. CALCULATION OF CREDIT. A corporation may establish a credit, equal to five percent of the total wages and salaries paid by the corporation for qualifying jobs during the period upon which the tax is based, on each of five consecutive reports beginning with the report based upon the period during which the qualifying jobs were created.

SECTION 53. Chapter 171, Tax Code, is amended by adding Section 171.7541 to read as follows:

1 Sec. 171.7541. LENGTH OF CREDIT. Notwithstanding Section
2 171.753, a corporation that has been designated as an enterprise
3 project or as a defense readjustment project may establish a credit
4 equal to twenty-five percent of the total wages and salaries paid by
5 the corporation for qualifying jobs during the period upon which
6 the tax is based. This section expires January 1, 2005.

7 SECTION 54. Section 171.802, Tax Code, is amended by adding
8 (d) to read as follows:

9 (d) A corporation that is certified by the Texas Department
10 of Economic Development as a qualified business under Section
11 2303.402 or under Section 2310.302, Government Code, may qualify
12 for the credit, regardless of whether it meets the qualifications
13 prescribed by subsection (b) of this section. This subsection
14 expires January 1, 2005.

15 SECTION 55. The heading of Subchapter S, Chapter 171, Tax
16 Code, as added by Chapter 1263, Acts of the 77th Legislature,
17 Regular Session, 2001, is amended to read as follows:

18 SUBCHAPTER U. [~~S~~] CREDITS LIMITATION

19 SECTION 56. Section 171.851, Tax Code, as added by Chapter
20 1263, Acts of the 77th Legislature, Regular Session, 2001, is
21 redesignated Section 171.871.

22 Sec. 171.871 [~~171.851~~]. LIMITATION

23 SECTION 57. Section 171.853(c), Tax Code, is amended to
24 read as follows:

25 (c) The credit claimed for each privilege period may not
26 exceed 50 percent of the amount of [~~net~~] franchise tax due,
27 before [~~after~~] any other applicable tax credits, for the privilege

1 period.

2 SECTION 58. Chapter 171, Tax Code, is amended by adding
3 Subchapter T to read as follows:

4 SUBCHAPTER T. TAX CREDIT FOR TITLE INSURANCE HOLDING
5 COMPANIES.

6 Sec. 171.861. TAX CREDIT FOR TITLE INSURANCE HOLDING
7 COMPANIES. (a) The definitions for this section are the same as
8 for Article 21.49-1, Insurance Code.

9 (b) A title insurance holding company that is subject to
10 Article 21.49-1, Insurance Code, and which controls one or more
11 domestic title insurance companies that are subject to the tax on
12 premiums under Article 9.59, Insurance Code, is entitled to a
13 credit against its franchise tax imposed by this Chapter. The
14 amount of the credit for each controlled domestic title insurance
15 company is computed by multiplying the amount of tax on premiums
16 paid by that controlled domestic title insurance company in the
17 most recent calendar year ending before the franchise tax report is
18 due, by the percentage ownership of the title insurance holding
19 company in the controlled domestic title insurance company. The
20 percentage of ownership of a controlled domestic title insurance
21 company is determined as of the accounting year-end upon which the
22 franchise tax report is based.

23 (c) A claim for a credit is subject to the following
24 limitations:

25 (1) if the total amount of the credit for all
26 controlled title insurance companies exceeds the franchise tax due,
27 the credit is an amount equal to the franchise tax due;

1 (2) no portion of a credit may be applied to another
2 year's franchise tax report; and

3 (3) a corporation may not take credit for the same tax
4 on premiums more than once.

5 (d) This section does not exempt a title insurance holding
6 company, a title insurance company, or a title insurance agent from
7 paying any tax imposed under this code, except that a title
8 insurance company or a title insurance agent whose principal
9 activity is the business of title insurance is exempt from any tax
10 imposed by this chapter.

11 SECTION 59. Section 201.057(c), Tax Code, is amended to
12 read as follows:

13 (c) High-cost gas as defined in Subsection (a)(2)(A)
14 produced from a well that is spudded or completed after August 31,
15 1996, ~~[and before September 1, 2010,]~~ is entitled to a reduction of
16 the tax imposed by this chapter for the first 120 consecutive
17 calendar months beginning on the first day of production, or until
18 the cumulative value of the tax reduction equals 50 percent of the
19 drilling and completion costs incurred for the well, whichever
20 occurs first. The amount of tax reduction shall be computed by
21 subtracting from the tax rate imposed by Section 201.052 the
22 product of that tax rate times the ratio of drilling and completion
23 costs incurred for the well to twice the median drilling and
24 completion costs for high-cost wells as defined in Subsection
25 (a)(2)(A) spudded or completed during the previous state fiscal
26 year, except that the effective rate of tax may not be reduced below
27 zero.

SECTION 60. Section 202.054(c), Tax Code, is amended to read as follows:

(c) This section applies to an enhanced recovery project that begins active operation on or after September 1, 1989, and to an expansion that the commission approves on or after September 1, 1991. An application for approval under this section must be filed on or after September 1, 1989, [~~and before January 1, 2008,~~] for a new enhanced recovery project. An application for approval under this section must be filed on or after September 1, 1991, [~~and before January 1, 2008,~~] for an expansion of an existing enhanced recovery project. A project may not qualify as an expansion if the project has qualified as a new enhanced recovery project under this section. An application may be filed on or after September 1, 1989, even if a separate application for approval of the project or expansion has already been filed under Subchapter B, Chapter 101, Natural Resources Code, or for approval as a tertiary recovery project for purposes of Section 4993, Internal Revenue Code of 1986, if the operation of a new project or the expansion of an existing project, other than a co-production project, does not begin before the application for approval under this section is approved by the commission; provided, however, nothing herein shall require commission approval of a co-production project prior to commencing active operations on such project in order for such project to be eligible for the recovered oil tax rate.

SECTION 61. Chapter 321, Tax Code, is amended by adding Section 321.107 to read as follows:

Sec. 321.107. ADMINISTRATION OF LOCAL SALES AND USE TAXES

IMPOSED BY OTHER GOVERNMENTAL ENTITIES. The imposition, computation, administration, enforcement, and collection of any local sales and use tax imposed by any other local governmental entity is governed by this chapter, except as otherwise provided by law. In this section, "other local governmental entity" includes any governmental entity created by the legislature that has a limited purpose or function, a defined or restricted geographic territory, and that is authorized by law to impose a local sales and use tax. The term does not include municipalities, counties, county health services districts, county landfill and criminal detention center districts, metropolitan transportation authorities, economic development districts, crime control districts, hospital districts, emergency services districts, or library districts.

SECTION 62. Section 322.001(a), Tax Code, is amended to read as follows:

(a) This chapter applies to the imposition, assessment, collection, administration, and enforcement of a sales and use tax imposed under Chapter 451, 452, ~~or~~ 453, or 460, Transportation Code.

SECTION 63. Section 322.002, Tax Code, is amended to read as follows:

Sec. 322.002. DEFINITIONS. (1) "Taxing entity" means a rapid transit authority, a county transit authority created under Chapter 460, Transportation Code, a regional transit authority, including a subregional transportation authority, or a municipal transit department created under Chapter 451, 452 and 453, Transportation Code, that has adopted a sales and use tax under the

1 law authorizing the creation of the entity.

2 (1) "Entity area", means the geographical limits of a
3 taxing entity.

4 (2) "Municipal sales and use tax" means a sales and use
5 tax imposed by a municipality under the Municipal Sales and Use Tax
6 Act (Chapter 321) within an entity area.

7 SECTION 64. Repealer. The following are repealed:

8 (a) Section 151.355, Tax Code, as added by Acts 2001, 77th
9 Leg., ch. 966, Section 4.25;

10 (b) Section 153.205, Tax Code, as amended by Section 37,
11 Chapter 1263, Acts of the 77th Legislature, Regular Session, 2001;

12 (c) Section 153.205, Tax Code, as amended by Section 2,
13 Chapter 1444, Acts of the 77th Legislature, Regular Session, 2001;

14 (d) Section 171.754, Tax Code, as amended by Section 1.10,
15 Chapter 1134, Acts of the 77th Legislature, Regular Session, 2001;

16 (e) Section 2.08, Chapter 1134, Acts of the 77th
17 Legislature, Regular Session, 2001.

18 SECTION 65. Each change in law made to the following
19 provisions by this Act is a clarification of existing law and does
20 not imply that existing law may be construed as inconsistent with
21 the law as amended by this Act:

22 (1) Section 1, Article 4.10, Insurance Code;

23 (2) Article 4.17(a), Insurance Code;

24 (3) Article 17.22(a), Insurance Code;

25 (4) Article 20A.33(d), Insurance Code;

26 (5) Section 101.053(b), Insurance Code;

27 (6) Section 376.570(d), Local Government Code;

- 1 (7) Section 2153.153(a), Occupations Code;
- 2 (8) Section 151.0035, Tax Code;
- 3 (9) Section 151.005, Tax Code;
- 4 (10) Section 151.056, Tax Code
- 5 (11) Section Sections 151.313(a) and (c), Tax Code;
- 6 (12) Section 151.3501, Tax Code;
- 7 (13) Section 151.355, Tax Code;
- 8 (14) Section 153.013(a), Tax Code;
- 9 (15) Section 153.120, Tax Code
- 10 (16) Section 153.205, Tax Code
- 11 (17) Section 153.222(a), Tax Code;
- 12 (18) Section 153.403, Tax Code;
- 13 (19) Section 171.052, Tax Code;
- 14 (20) Section 171.1032(b), Tax Code;
- 15 (21) Section 171.1051(c), Tax Code
- 16 (22) Section 171.106, Tax Code;
- 17 (23) Section 171.110(a), (b), (c), (k), and (l), Tax
- 18 Code;
- 19 (24) Section 171.731, Tax Code;
- 20 (25) Section 171.751(1), Tax Code;
- 21 (26) The heading of Subchapter S, Tax Code, as added by
- 22 Chapter 1263, Acts of the 77th Legislature, Regular Session, 2001;
- 23 (28) Section 171.851, Tax Code, as added by Chapter
- 24 1263, Acts of the 77th Legislature, Regular Session, 2001;
- 25 (29) Subchapter T, Chapter 171, Tax Code;
- 26 (30) Section 321.107, Tax Code;
- 27 (31) Section 322.001(a), Tax Code;

1 (32) Section 322.002, Tax Code

2 SECTION 66. Effective Dates.

3 (a) Except as otherwise provided herein, this Act takes
4 effect September 1, 2003.

5 (b) SECTIONS 15, 29, 37, and 38 of this Act take effect
6 October 1, 2003.

7 (c) SECTION 16 of this Act takes effect September 1, 2003
8 and applies only to tax liens filed on or after that date.

9 (d) SECTIONS 2, 4, 5, 7, and 9 of this Act take effect
10 January 1, 2004.

11 (e) SECTIONS 46, 49, and 57 of this Act take effect take
12 effect January 1, 2004, and apply to reports originally due on or
13 after that date. A report originally due before January 1, 2004, is
14 governed by the law in effect on the date the report is originally
15 due, and the prior law is continued in effect for this purpose.

16 (f) SECTIONS 51, 52, 53 and 54 of this Act take effect
17 September 1, 2003 and apply to reports originally due on after that
18 date.