

By: Keffer of Eastland

H.B. No. 3

Substitute the following for H.B. No. 3:

By: Smithee

C.S.H.B. No. 3

A BILL TO BE ENTITLED

AN ACT

1
2 relating to property tax relief and protection of taxpayers, taxes
3 and fees, and other matters relating to the financing of public
4 schools; providing civil and criminal penalties; making an
5 appropriation.

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

7 ARTICLE 1. SCHOOL PROPERTY TAX RELIEF

8 PART A. SCHOOL PROPERTY TAX RELIEF

9 SECTION 1A.01. Section 45.003, Education Code, is amended
10 by amending Subsection (d) and adding Subsections (d-1), (d-2),
11 (d-3), and (e) to read as follows:

12 (d) A proposition submitted to authorize the levy of
13 maintenance taxes must include the question of whether the
14 governing board or commissioners court may levy, assess, and
15 collect annual ad valorem taxes for the further maintenance of
16 public schools, at a rate not to exceed the rate stated in the
17 proposition, which may be not more than the sum of:

18 (1) \$1.12 [~~\$1.50~~] on the \$100 valuation of taxable
19 property in the district; and

20 (2) \$0.15 on the \$100 valuation of taxable property in
21 the district for enrichment, as authorized by an election as
22 provided by Chapter 42 [~~, stated in the proposition~~].

23 (d-1) Notwithstanding Subsection (d), for the 2005 tax
24 year, a proposition submitted to authorize the levy of maintenance

1 taxes must include the question of whether the governing board or
2 commissioners court may levy, assess, and collect annual ad valorem
3 taxes for the further maintenance of public schools, at a rate not
4 to exceed the rate stated in the proposition, which may be not more
5 than the sum of:

6 (1) \$1.23 on the \$100 valuation of taxable property in
7 the district; and

8 (2) \$0.15 on the \$100 valuation of taxable property in
9 the district for enrichment, as authorized by an election as
10 provided by Chapter 42.

11 (d-2) Subsection (d-1) takes effect only if H.B. No. 2, Acts
12 of the 79th Legislature, 1st Called Session, 2005, and H.B. No. 3,
13 Acts of the 79th Legislature, 1st Called Session, 2005, receive a
14 vote of two-thirds of all the members elected to each house. If
15 either does not receive a vote of two-thirds of all the members
16 elected to each house:

17 (1) the change in law made by H.B. No. 3, Acts of the
18 79th Legislature, 1st Called Session, 2005, to Subsection (d)
19 applies beginning with the 2006-2007 school year; and

20 (2) Subsection (d-1) has no effect.

21 (d-3) Subsections (d-1) and (d-2) and this subsection
22 expire January 1, 2006.

23 (e) An election held before January 1, 2005, authorizing a
24 maintenance tax at a rate of at least \$1.23 on the \$100 valuation of
25 taxable property in the district is sufficient to authorize a rate
26 of \$1.23 or less for the 2005 tax year. An election held before
27 January 1, 2006, authorizing a maintenance tax at a rate of at least

1 \$1.12 on the \$100 valuation of taxable property in the district is
2 sufficient to authorize a rate of \$1.12 or less for the 2006 tax
3 year.

4 SECTION 1A.02. (a) This part takes effect September 1,
5 2005.

6 (b) This part applies beginning with the 2005-2006 school
7 year.

8 PART B. BUY-DOWN OF SCHOOL DISTRICT TAXES

9 SECTION 1B.01. Chapter 403, Government Code, is amended by
10 adding Subchapters O and P to read as follows:

11 SUBCHAPTER O. DISTRIBUTION OF INCREASES

12 IN AVAILABLE STATE REVENUE FOR SCHOOL DISTRICT

13 TAX RATE REDUCTION

14 Sec. 403.351. DEFINITIONS. In this subchapter:

15 (1) "Available state revenue" means state revenue from
16 any source other than federal funds or revenue that, under a
17 provision of the Texas Constitution, may be used only for a
18 particular purpose.

19 (2) "Increase in available state revenue" means the
20 amount by which the estimate made by the comptroller in advance of a
21 regular session of the legislature under Section 49a(a), Article
22 III, Texas Constitution, of available state revenue for the
23 succeeding state fiscal biennium exceeds the estimate made by the
24 comptroller at that time under that section of available state
25 revenue for the current state fiscal biennium.

26 Sec. 403.352. CERTIFICATION OF INCREASE IN AVAILABLE STATE
27 REVENUE. In the statement required by Section 49a, Article III,

1 Texas Constitution, in advance of a regular session of the
2 legislature, the comptroller shall certify:

3 (1) the amount, if any, of the increase in available
4 state revenue for the succeeding state fiscal biennium; and

5 (2) the total amount of school district maintenance
6 and operations taxes levied under Section 3(e), Article VII, Texas
7 Constitution, for the ad valorem tax year beginning in the second
8 year of the current state fiscal biennium.

9 Sec. 403.353. DISTRIBUTION OF AVAILABLE STATE REVENUE FOR
10 TAX RATE REDUCTION. (a) For the state fiscal biennium following a
11 certification under Section 403.352, the comptroller shall
12 distribute to the school districts in this state for tax rate
13 reduction an amount of available state revenue that is equal to the
14 sum of:

15 (1) an amount equal to not less than 15 percent of the
16 increase in available state revenue for the current state fiscal
17 biennium certified under Section 403.352, as determined by the
18 Legislative Budget Board and the governor; and

19 (2) the amount of available state revenue distributed
20 in the preceding state fiscal biennium under this section for
21 school district tax rate reduction.

22 (b) The comptroller shall distribute the amount required by
23 Subsection (a) in equal amounts in each state fiscal year of the
24 state fiscal biennium. The amount distributed in each state fiscal
25 year shall be apportioned among the school districts in amounts
26 that, applied to the total taxable value of property in each
27 district determined under Subchapter M, for the most recent ad

1 valorem tax year for which the information is available, would
2 reduce the rate of each school district's maintenance and
3 operations tax by the same percentage, except that a school
4 district maintenance and operations tax rate may not be reduced to
5 less than 75 cents for each \$100 of taxable value.

6 (c) The money received by each school district under this
7 section must be applied to reducing the rollback tax rate of the
8 district as provided by Section 26.08, Tax Code.

9 SUBCHAPTER P. SCHOOL PROPERTY TAX RELIEF FUND

10 Sec. 403.401. SCHOOL PROPERTY TAX RELIEF FUND. The school
11 property tax relief fund is an account in the general revenue fund.
12 Money in the fund may be used only to reduce school district
13 maintenance and operations tax rates below the rates specified in
14 H.B. No. 3, Acts of the 79th Legislature, 1st Called Session, 2005.

15 Sec. 403.402. CERTIFICATION OF CERTAIN STATE TAX REVENUE.

16 (a) Not later than the effective date of H.B. No. 3, Acts of the
17 79th Legislature, 1st Called Session, 2005, the comptroller shall
18 estimate:

19 (1) for the state fiscal year ending August 31, 2005,
20 and for each of the five succeeding state fiscal years, the amount
21 of the increase in state revenue that is attributable to changes in
22 law made by that Act; and

23 (2) for the 2005 ad valorem tax year and each of the
24 five succeeding ad valorem tax years, the amount of the reduction in
25 school district maintenance and operations taxes that is
26 attributable to changes in law made by that Act.

27 (b) The comptroller shall report in writing each estimate

1 made under Subsection (a) to the governor, the lieutenant governor,
2 the Legislative Budget Board, and each member of the legislature.

3 (c) Not later than September 30 of each calendar year, the
4 comptroller shall:

5 (1) compute, for the preceding state fiscal year:

6 (A) the actual amount of the increase in state
7 revenue that is attributable to changes in law made by H.B. No. 3,
8 Acts of the 79th Legislature, 1st Called Session, 2005; and

9 (B) the difference between:

10 (i) the amount determined under Paragraph
11 (A); and

12 (ii) the corresponding amount estimated for
13 that state fiscal year under Subsection (a);

14 (2) if the amount described by Subdivision (1)(B)(i)
15 is greater than the amount described by Subdivision (1)(B)(ii),
16 transfer an amount equal to the amount determined under Subdivision
17 (1)(B) to the school property tax relief fund, except as provided by
18 Subsection (d); and

19 (3) report in writing the amount of any transfer under
20 Subdivision (2) to the governor, the lieutenant governor, the
21 Legislative Budget Board, and each member of the legislature.

22 (d) The comptroller may not make a transfer under Subsection
23 (c)(2) if making the transfer would reduce the amount of general
24 revenue available for purposes of certification of the General
25 Appropriations Act to an amount less than the amount estimated to be
26 available at the time the comptroller certified the General
27 Appropriations Act under Section 49a(b), Article III, Texas

1 Constitution.

2 (e) In making the statement required by Section 49a, Article
3 III, Texas Constitution, in advance of a regular session of the
4 legislature, the comptroller shall consider the amount, if any, of
5 any estimated transfers required under Subsection (c)(2) for the
6 succeeding state fiscal biennium. The comptroller shall deduct the
7 amount of any estimated transfers required under Subsection (c)(2)
8 for the succeeding state fiscal biennium from the amount available
9 for appropriation as if those transfers were made on August 31 of
10 the state fiscal year for which the transfers are made.

11 Sec. 403.403. DISTRIBUTION OF AVAILABLE STATE REVENUE FOR
12 TAX RATE REDUCTION. (a) Beginning with the state fiscal year
13 ending August 1, 2007, each state fiscal year, the comptroller
14 shall distribute to the school districts in this state for
15 maintenance tax rate reduction the amount transferred to the school
16 district property tax relief fund under Section 403.402(c)(2) for
17 that state fiscal year.

18 (b) The comptroller shall distribute the amount required by
19 Subsection (a) in equal amounts in each state fiscal year. The
20 amount distributed in each state fiscal year shall be apportioned
21 among the school districts in amounts that, as applied to the total
22 taxable value of property in each district determined under
23 Subchapter M, for the most recent year for which the information is
24 available, would reduce the rate of each school district's
25 maintenance and operations tax by the same percentage.

26 (c) The money received by each school district under this
27 section must be applied to reducing the rollback tax rate of the

1 district as provided by Section 26.08, Tax Code.

2 Sec. 403.404. EXPIRATION. This subchapter expires
3 September 1, 2010.

4 SECTION 1B.02. Subchapter E, Chapter 42, Education Code, is
5 amended by adding Section 42.2518 to read as follows:

6 Sec. 42.2518. ADDITIONAL STATE AID FOR PROPERTY TAX RELIEF.

7 (a) For any school year, a school district is entitled to
8 additional state aid to the extent that an increase in the
9 guaranteed level of state and local funds per weighted student per
10 cent of tax effort under Section 42.302 applicable to that school
11 year does not compensate the district for a reduction in district ad
12 valorem tax revenue caused by ad valorem tax rate reduction made
13 pursuant to Subchapter O or P, Chapter 403, Government Code.

14 (b) A determination by the commissioner under this section
15 is final and may not be appealed.

16 SECTION 1B.03. Sections 26.08(i) and (k), Tax Code, are
17 amended to read as follows:

18 (i) For purposes of this section, the rollback tax rate of a
19 school district is the sum of:

20 (1) the tax rate that, applied to the current total
21 value for the district, would impose taxes in an amount that, when
22 added to state funds that would be distributed to the district under
23 Chapter 42, Education Code, and state funds for property tax rate
24 relief that will be distributed to the district under Subchapters O
25 and P, Chapter 403, Government Code, for the school year beginning
26 in the current tax year using that tax rate, would provide the same
27 amount of state funds distributed under Chapter 42, Education Code,

1 and Subchapters O and P, Chapter 403, Government Code, and
2 maintenance and operations taxes of the district per student in
3 weighted average daily attendance for that school year that would
4 have been available to the district in the preceding year if the
5 funding elements for Chapters 41 and 42, Education Code, for the
6 current year had been in effect for the preceding year;

7 (2) the rate of \$0.06 per \$100 of taxable value; and

8 (3) the district's current debt rate.

9 (k) For purposes of this section, for the [~~2003, 2004,~~]
10 2005, 2006, 2007, or 2008 tax year, for a school district that is
11 entitled to state funds under Section 1581.1015 [~~4(a-1), (a-2),~~
12 ~~(a-3), (a-4), (a-5), or (a-6), Article 3.50-9~~], Insurance Code, the
13 rollback tax rate of the district is the sum of:

14 (1) the tax rate that, applied to the current total
15 value for the district, would impose taxes in an amount that, when
16 added to state funds that would be distributed to the district under
17 Chapter 42, Education Code, and state funds for property tax rate
18 relief that will be distributed to the district under Subchapters O
19 and P, Chapter 403, Government Code, for the school year beginning
20 in the current tax year using that tax rate, would provide the same
21 amount of state funds distributed under Chapter 42, Education Code,
22 and Subchapters O and P, Chapter 403, Government Code, and
23 maintenance and operations taxes of the district per student in
24 weighted average daily attendance for that school year that would
25 have been available to the district in the preceding year if the
26 funding elements for Chapters 41 and 42, Education Code, for the
27 current year had been in effect for the preceding year;

1 (2) the tax rate that, applied to the current total
2 value for the district, would impose taxes in the amount that, when
3 added to state funds that would be distributed to the district under
4 Chapter 42, Education Code, and Subchapters O and P, Chapter 403,
5 Government Code, for the school year beginning in the current tax
6 year using that tax rate, permits the district to comply with
7 Section 1581.052 [~~3, Article 3.50-9~~], Insurance Code;

8 (3) the rate of \$0.06 per \$100 of taxable value; and

9 (4) the district's current debt rate.

10 SECTION 1B.04. For the state fiscal biennium beginning
11 September 1, 2005, the money in the school property tax relief fund
12 under Subchapter P, Chapter 403, Government Code, as added by this
13 part, is appropriated to the comptroller to be used only to reduce
14 school district maintenance tax rates below the rates specified in
15 H.B. No. 3, Acts of the 79th Legislature, 1st Called Session, 2005.
16 The Legislative Budget Board and the governor shall approve
17 procedures for the distribution of money from the school property
18 tax relief fund.

19 PART C. RENDITION OF PROPERTY FOR AD VALOREM TAXATION AND

20 REGULATION OF ASSET VERIFICATION AGENTS

21 SECTION 1C.01. Section 22.28(a), Tax Code, is amended to
22 read as follows:

23 (a) Except as otherwise provided by Section 22.30, the chief
24 appraiser shall impose a penalty on a person who fails to timely
25 file a rendition statement or property report required by this
26 chapter in an amount equal to 10 percent of the total amount of
27 taxes imposed on the property for that year by taxing units

1 participating in the appraisal district. A lien in the amount of
2 the penalty attaches to the property against which the penalty is
3 imposed, as if it were a tax, and a delinquent penalty accrues
4 penalties and interest in the same manner as a delinquent tax.

5 SECTION 1C.02. Section 22.29, Tax Code, is amended by
6 adding Subsection (c-1) to read as follows:

7 (c-1) A lien in the amount of the penalty attaches to the
8 property against which the penalty is imposed, as if it were a tax,
9 and a delinquent penalty accrues penalties and interest in the same
10 manner as a delinquent tax.

11 SECTION 1C.03. Subchapter B, Chapter 22, Tax Code, is
12 amended by adding Section 22.31 to read as follows:

13 Sec. 22.31. RENDITION VERIFICATION. (a) The chief
14 appraiser or an authorized representative of the chief appraiser
15 retained or employed by the appraisal district may request in
16 writing that a property owner provide to the chief appraiser or
17 authorized representative copies of the schedules and forms filed
18 by the property owner with the Internal Revenue Service that relate
19 to the acquisition and cost of fixed assets, including fixed asset
20 ledgers and depreciation schedules. Not later than the 21st day
21 after the date the request is received, the property owner shall
22 deliver or make available the requested documents for inspection by
23 the chief appraiser or authorized representative. The chief
24 appraiser or authorized agent shall use the information obtained
25 under this subsection to verify the location and valuation of
26 tangible personal property used for the production of income for
27 purposes of inclusion of the property on an appraisal roll.

1 (b) Any document delivered or made available for inspection
2 under Subsection (a) is confidential to the same extent that a
3 rendition statement or property report is confidential under
4 Section 22.27.

5 (c) A property owner who delivers or makes available for
6 inspection documents under Subsection (a) may redact from the
7 documents any information not specifically related to the
8 acquisition, cost, or depreciation of fixed assets.

9 (d) An authorized representative of a chief appraiser
10 retained or employed by an appraisal district who performs services
11 under this section for compensation must hold a certificate of
12 registration as an asset verification agent issued under Chapter
13 1152, Occupations Code.

14 (e) An appraisal district may contract with a qualified
15 person to retain the person to perform services under this section.
16 A person performing services under this section is not an appraiser
17 for purposes of Chapter 25. A person performing services under this
18 section may not perform a field visit to verify assets.

19 (f) A contract entered into under Subsection (e) is not
20 subject to Section 6.11(a).

21 (g) The compensation of an authorized representative
22 retained under a contract under Subsection (e) shall be set in the
23 contract, but the total amount of compensation may not exceed 20
24 percent of the value of any tax, penalties, and interest on
25 unreported or underreported assets verified by the authorized
26 representative.

27 (h) Not later than July 31 of each year, a chief appraiser

1 shall submit a report to the commissioner of education on the
2 increased value added as a result of rendition verification for
3 each school district participating in the appraisal district. The
4 commissioner shall adjust distributions from the Texas education
5 fund to a school district based on the reported value increases.

6 SECTION 1C.04. The heading to Chapter 1152, Occupations
7 Code, is amended to read as follows:

8 CHAPTER 1152. PROPERTY TAX CONSULTANTS AND ASSET VERIFICATION
9 AGENTS

10 SECTION 1C.05. Section 1152.001, Occupations Code, is
11 amended by adding Subdivision (2) and amending Subdivision (7) to
12 read as follows:

13 (2) "Asset verification agent" means a person retained
14 or employed by an appraisal district to verify the location and
15 valuation of tangible personal property used for the production of
16 income for purposes of inclusion of the property on an appraisal
17 roll.

18 (7) "Registrant" means a person who is registered as a
19 property tax consultant, ~~or~~ a senior property tax consultant, or
20 an asset verification agent under this chapter.

21 SECTION 1C.06. Section 1152.108, Occupations Code, is
22 amended to read as follows:

23 Sec. 1152.108. COUNCIL POWERS. (a) The council shall:

24 (1) recommend to the commission standards of practice,
25 conduct, and ethics for registrants to be adopted under this
26 chapter;

27 (2) recommend to the commission amounts for the fees

1 it may set under this chapter;

2 (3) recommend to the commission contents for the
3 senior property tax consultant registration examination and
4 standards of acceptable performance;

5 (4) assist and advise the commission in recognizing
6 continuing education programs and educational courses for
7 registrants; and

8 (5) advise the commission in establishing educational
9 requirements for initial applicants.

10 (b) Standards of practice, conduct, and ethics recommended
11 under Subsection (a)(1) for an asset verification agent must be
12 designed to ensure the integrity of the documents and other
13 information acquired and used by the agent.

14 SECTION 1C.07. Section 1152.151, Occupations Code, is
15 amended by adding Subsection (c) to read as follows:

16 (c) A person may not perform services as an asset
17 verification agent for compensation unless the person holds a
18 certificate of registration issued under this chapter.

19 SECTION 1C.08. Section 1152.251, Occupations Code, is
20 amended to read as follows:

21 Sec. 1152.251. DISCIPLINARY POWERS OF COMMISSION. After a
22 hearing, the commission may deny a certificate of registration and
23 may impose an administrative sanction or penalty and seek
24 injunctive relief and a civil penalty against a registrant as
25 provided by Chapter 51 for:

26 (1) a violation of this chapter or a rule applicable to
27 the registrant adopted by the commission under this chapter;

1 (2) gross incompetency in the performance of property
2 tax consulting services or services as an asset verification agent;

3 (3) dishonesty or fraud committed while performing
4 property tax consulting services or services as an asset
5 verification agent; or

6 (4) a violation of the standards of ethics adopted by
7 the commission.

8 SECTION 1C.09. Section 1152.252(a), Occupations Code, is
9 amended to read as follows:

10 (a) A person required to be registered under this chapter
11 commits an offense if the person:

12 (1) [~~is not registered under this chapter; and~~
13 [~~2~~] performs or offers to perform property tax
14 consulting services for compensation or services as an asset
15 verification agent for compensation; and

16 (2) is not registered under this chapter as a property
17 tax consultant or senior property tax consultant or as an asset
18 verification agent, as appropriate.

19 SECTION 1C.10. (a) Except as otherwise provided by this
20 section, this part takes effect immediately if this Act receives a
21 vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 part takes effect on the 91st day after the last day of the
25 legislative session.

26 (b) Sections 22.28 and 22.29, Tax Code, as amended by this
27 part, take effect January 1, 2006, and apply only to the rendition

1 of property for ad valorem tax purposes for a tax year that begins
2 on or after that date.

3 (c) Section 22.31, Tax Code, as added by this part, takes
4 effect April 1, 2006, and applies only to the rendition of property
5 for ad valorem tax purposes for a tax year that begins on or after
6 January 1, 2006. Any additional value identified as a result of
7 rendition verification for the 2006 tax year shall be treated as
8 omitted property under Section 25.21(a), Tax Code.

9 (d) Sections 1152.151, 1152.251, and 1152.252, Occupations
10 Code, as amended by this part, take effect April 1, 2006.

11 (e) The Texas Commission of Licensing and Regulation shall
12 adopt rules under Chapter 1152, Occupations Code, as amended by
13 this part, and under Chapter 51, Occupations Code, pertaining to
14 the regulation of asset verification agents not later than January
15 1, 2006.

16 ARTICLE 2. FRANCHISE TAX

17 PART A. CORPORATE OWNERSHIP IN PARTNERSHIPS

18 SECTION 2A.01. Section 113.001, Tax Code, is amended by
19 adding Subsection (c) to read as follows:

20 (c) Any tax, interest, or penalties due to the state under
21 Chapter 171 by a person who is subject to that tax by application of
22 Section 171.001(d) are additionally secured by a lien on the
23 person's interest in the partnership doing business in this state
24 whose activities cause the person to be subject to that tax,
25 including a general or limited partnership interest that the person
26 is considered to own under Sections 171.001(e) and (f).

27 SECTION 2A.02. Section 171.001(b), Tax Code, is amended by

1 adding Subdivisions (6-a) and (6-b) to read as follows:

2 (6-a) "Partner" includes a beneficiary in a trust.

3 (6-b) "Partnership" includes a partnership, a joint
4 venture, and a trust.

5 SECTION 2A.03. Section 171.001, Tax Code, is amended by
6 adding Subsections (d), (e), (f), (g), and (h) to read as follows:

7 (d) For purposes of Subsection (a), a corporation does
8 business in this state if the corporation is a foreign corporation
9 and:

10 (1) holds a partnership interest, including an
11 interest as an assignee, as a general partner in a general
12 partnership that is doing business in this state;

13 (2) holds a partnership interest, including an
14 interest as an assignee, as a general partner in a limited
15 partnership that is doing business in this state; or

16 (3) holds a controlling interest in a partnership,
17 including an interest as an assignee, as a limited partner in a
18 limited partnership that is doing business in this state.

19 (e) For purposes of Subsection (d), a partner who owns an
20 interest in an upper tier partnership is considered to be both a
21 partner in the upper tier partnership and a partner in each lower
22 tier partnership.

23 (f) For purposes of Subsection (d)(3), a limited partner is
24 considered to hold a controlling interest if any related party owns
25 a controlling interest, directly or indirectly, in the partnership.
26 In this subsection, "controlling interest" and "related party" have
27 the meanings assigned those terms by Section 171.1001.

1 (g) If a corporate partner asserts that the tax imposed
2 under this chapter violates the United States Constitution or
3 federal law because of the application of Subsection (d), the
4 franchise tax is imposed on the partnership doing business in this
5 state and the franchise tax liability of the partnership shall be
6 calculated as provided by Subsection (h).

7 (h) For purposes of Subsection (g), reportable federal
8 taxable income for a partnership is the partnership's income as an
9 entity, to the extent that the partnership is owned directly or
10 indirectly by a corporation, as determined under rules adopted by
11 the comptroller using principles similar to the standards applied
12 to a corporation.

13 SECTION 2A.04. Section 171.1032(c), Tax Code, is amended to
14 read as follows:

15 (c) A corporation shall include in its gross receipts
16 computed under Subsection (a) the corporation's share of the gross
17 receipts of each partnership and joint venture in which the
18 corporation directly or indirectly owns an interest [~~of which the~~
19 ~~corporation is a part~~] apportioned to this state as though the
20 corporation directly earned the receipts [~~, including receipts from~~
21 ~~business done with the corporation~~]. A corporation that owns an
22 interest in an upper tier partnership is considered to be a partner
23 in both the upper tier partnership and each lower tier partnership,
24 and the corporation's share of the gross receipts of each
25 partnership of which it is a partner is computed and apportioned to
26 this state as though the corporation directly earned the receipts
27 at the partnership tier at which the receipts were originally

1 earned.

2 SECTION 2A.05. Section 171.1051(d), Tax Code, is amended to
3 read as follows:

4 (d) A corporation shall include in its gross receipts
5 computed under Subsection (a) the corporation's share of the gross
6 receipts of each partnership and joint venture in which the
7 corporation directly or indirectly owns an interest [~~of which the~~
8 ~~corporation is a part~~]. A corporation that owns an interest in an
9 upper tier partnership is considered to be a partner in both the
10 upper tier partnership and each lower tier partnership, and the
11 corporation's share of the gross receipts of each partnership of
12 which it is a partner is computed as though the corporation directly
13 earned the receipts at the partnership tier at which the receipts
14 were originally earned.

15 SECTION 2A.06. Section 171.110, Tax Code, is amended by
16 adding Subsection (d-1) to read as follows:

17 (d-1) In computing net taxable earned surplus, a
18 corporation shall include the corporation's share of a
19 partnership's items of income or loss, without regard to whether
20 the partnership is taxed as a corporation for federal income tax
21 purposes.

22 SECTION 2A.07. Section 171.1121, Tax Code, is amended by
23 adding Subsection (f) to read as follows:

24 (f) A corporation that owns an interest in an upper tier
25 partnership is considered to be a partner in both the upper tier
26 partnership and each lower tier partnership, and the corporation's
27 share of the gross receipts of each partnership of which it is a

1 partner is computed and apportioned to this state as though the
2 corporation directly earned the receipts at the partnership tier at
3 which the receipts were originally earned.

4 SECTION 2A.08. This part takes effect November 1, 2005, and
5 applies to reports originally due on or after that date.

6 PART B. APPLICATION TO PARTNERSHIPS

7 SECTION 2B.01. (a) This part takes effect only if a court
8 enters a final judgment that the tax imposed under Chapter 171, Tax
9 Code, violates the United States Constitution because of the
10 application of Section 171.001(d), Tax Code.

11 (b) This part takes effect on the earlier of the date that
12 the final judgment under Subsection (a) of this section is upheld on
13 appeal without any possibility of further appeal or is not appealed
14 and is no longer subject to appeal, and applies to a report
15 originally due on or after that date.

16 SECTION 2B.02. Section 113.001, Tax Code, is amended by
17 adding Subsection (c-1) to read as follows:

18 (c-1) Any tax, interest, or penalties due to the state under
19 Chapter 171 by a person who is subject to that tax by application of
20 Section 171.001(a)(3) are additionally secured by a lien on the
21 person's interest in the partnership doing business in this state
22 whose activities cause the person to be subject to that tax.

23 SECTION 2B.03. Section 171.001(a), Tax Code, is amended to
24 read as follows:

25 (a) A franchise tax is imposed on:

26 (1) each corporation that does business in this state
27 or that is chartered in this state; ~~and~~

1 (2) each limited liability company that does business
2 in this state or that is organized under the laws of this state;

3 (3) each general partnership that is doing business in
4 this state to the extent the general partnership, including an
5 interest as an assignee, is owned directly or indirectly by a
6 corporation;

7 (4) each limited partnership that is doing business in
8 this state to the extent the general partner's interest, including
9 an interest as an assignee, in the limited partnership is owned
10 directly or indirectly by a corporation; and

11 (5) each limited partnership controlled by a corporate
12 limited partner, including an interest as an assignee, that is
13 doing business in this state to the extent the limited partnership
14 is owned directly or indirectly by the controlling limited partner.

15 SECTION 2B.04. Section 171.001(b)(3), Tax Code, is amended
16 to read as follows:

17 (3) "Corporation" includes:

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

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

21 (C) a banking corporation; and

22 (D) a partnership, to the extent appropriate for
23 purposes of the administration, collection, and enforcement of the
24 tax under this chapter as it is imposed on partnerships.

25 SECTION 2B.05. Section 171.1032(c), Tax Code, is amended to
26 read as follows:

27 (c) A corporation shall include in its gross receipts

1 computed under Subsection (a) the corporation's share of the gross
2 receipts of each partnership and joint venture of which the
3 corporation is a part apportioned to this state as though the
4 corporation directly earned the receipts, including receipts from
5 business done with the corporation.

6 SECTION 2B.06. Section 171.1051(d), Tax Code, is amended to
7 read as follows:

8 (d) A corporation shall include in its gross receipts
9 computed under Subsection (a) the corporation's share of the gross
10 receipts of each partnership and joint venture of which the
11 corporation is a part.

12 SECTION 2B.07. Section 171.110, Tax Code, is amended by
13 adding Subsection (d-2) to read as follows:

14 (d-2) Reportable federal taxable income for a partnership
15 subject to the franchise tax under Section 171.001(a) is the
16 partnership's income as an entity, to the extent that the
17 partnership is owned by a corporation, as determined under rules
18 adopted by the comptroller using principles similar to the
19 standards applied to a corporation.

20 SECTION 2B.08. Subchapter F, Chapter 171, Tax Code, is
21 amended by adding Section 171.2515 to read as follows:

22 Sec. 171.2515. FORFEITURE OF RIGHT OF PARTNERSHIP TO
23 TRANSACT BUSINESS IN THIS STATE. (a) The comptroller may, for the
24 same reasons and using the same procedures the comptroller uses in
25 relation to the forfeiture of the corporate privileges of a
26 corporation, forfeit the right of a partnership subject to a tax
27 imposed by this chapter to transact business in this state.

1 (b) The provisions of this subchapter, including Section
2 171.255, that apply to the forfeiture of corporate privileges apply
3 to the forfeiture of a partnership's right to transact business in
4 this state.

5 SECTION 2B.09. The following provisions of the Tax Code are
6 repealed:

- 7 (1) Section 113.001(c);
8 (2) Sections 171.001(d), (e), (f), (g), and (h);
9 (3) Section 171.110(d-1); and
10 (4) Section 171.1121(f).

11 SECTION 2B.10. (a) For a partnership becoming subject to
12 the franchise tax under this part, income or losses and related
13 gross receipts occurring before one year before the effective date
14 of this part may not be considered for purposes of the earned
15 surplus component or for apportionment purposes for the taxable
16 capital component.

17 (b) The comptroller shall adopt rules relating to
18 establishing the applicable reporting periods for partnerships
19 becoming subject to the franchise tax under this part.

20 PART C. ADD-BACK OF CERTAIN PAYMENTS

21 SECTION 2C.01. Subchapter C, Chapter 171, Tax Code, is
22 amended by adding Section 171.1001 to read as follows:

23 Sec. 171.1001. DEFINITIONS. In this subchapter:

24 (1) "Arm's length" means the standard of conduct under
25 which unrelated parties having substantially equal bargaining
26 power, each acting in its own interest, would negotiate or carry out
27 a particular transaction.

1 (2) "Controlling interest" means:

2 (A) for a corporation, either 50 percent or more,
3 owned directly or indirectly, of the total combined voting power of
4 all classes of stock of the corporation, or 50 percent or more,
5 owned directly or indirectly, of the beneficial ownership interest
6 in the voting stock of the corporation; and

7 (B) for a partnership, association, trust, or
8 other entity, 50 percent or more, owned directly or indirectly, of
9 the capital, profits, or beneficial interest in the partnership,
10 association, trust, or other entity.

11 (3) "Interest payment" means an amount allowable as an
12 interest deduction under Section 163, Internal Revenue Code.

13 (4) "Management fee" means a fee for services of a
14 managerial or administrative nature, including services pertaining
15 to management, accounts receivable and payable, employee benefit
16 plans, insurance, legal matters, payroll, data processing,
17 purchasing, taxes, financial matters, securities, accounting,
18 reporting, and compliance.

19 (5) "Related party" means a person, corporation, or
20 other entity, including an entity that is treated as a pass-through
21 or disregarded entity for purposes of federal taxation, whether the
22 person, corporation, or entity is subject to the tax under this
23 chapter or not, in which one person, corporation, or entity, or set
24 of related persons, corporations, or entities, directly or
25 indirectly owns or controls a controlling interest in another
26 entity. To the extent necessary to carry out this section, the
27 comptroller shall adopt rules defining "related party" using

1 principles substantially similar to Section 318, Internal Revenue
2 Code.

3 (6) "Royalty payment" means a payment directly
4 connected to the acquisition, use, maintenance or management,
5 ownership, sale, exchange, or any other disposition of licenses,
6 trademarks, copyrights, trade names, trade dress, service marks,
7 mask works, trade secrets, patents, or any other similar types of
8 intangible assets as determined by the comptroller.

9 (7) "Valid business purpose" means one or more
10 business purposes, other than the avoidance or reduction of taxes,
11 that alone or in combination constitute the primary motivation for
12 a business activity or transaction that changes in a meaningful
13 way, apart from tax effects, the economic position of the entity. A
14 valid business purpose includes compliance with a regulatory
15 requirement of:

16 (A) the federal government;

17 (B) a state or local government;

18 (C) a foreign nation; or

19 (D) an agency or political subdivision of any
20 entity listed in Paragraphs (A)-(C).

21 SECTION 2C.02. Subchapter C, Chapter 171, Tax Code, is
22 amended by adding Sections 171.1101-171.1103 to read as follows:

23 Sec. 171.1101. ADD-BACK OF PAYMENTS TO RELATED PARTY.

24 Except as provided by Section 171.1102, a corporation shall add
25 back to reportable federal taxable income any royalty payments,
26 interest payments, and management fees made to a related party
27 during the period on which earned surplus is based to the extent

1 deducted in computing reportable federal taxable income.

2 Sec. 171.1102. SAFE HARBORS FOR CERTAIN PAYMENTS AND FEES.

3 (a) A corporation is not required to add back royalty payments to a
4 related party to the extent:

5 (1) the related party during the period on which
6 earned surplus is based directly or indirectly paid or incurred the
7 amount to a person or entity that is not a related party, the
8 transaction was done for a valid business purpose, and the payments
9 were made at arm's length; or

10 (2) the royalty payments are paid or incurred to a
11 related party organized under the laws of a foreign nation, are
12 subject to a comprehensive income tax treaty between the foreign
13 nation and the United States, and are taxed in the foreign nation at
14 a tax rate equal to or greater than the rate under Section
15 171.002(a)(2).

16 (b) A corporation is not required to add back interest
17 payments to a related party to the extent:

18 (1) the interest is at or below the applicable federal
19 rate compounded annually for debt instruments under Section
20 1274(d), Internal Revenue Code, that was in effect at the time of
21 the agreement; or

22 (2) the related party during the period on which
23 earned surplus is based directly or indirectly paid or incurred the
24 amount to a person or entity that is not a related party, the
25 transaction was done for a valid business purpose, and the payments
26 were made at arm's length.

27 (c) A corporation is not required to add back a royalty

1 payment or an interest payment made to a related party, or a
2 management fee paid to a related party, if the combined tax paid to
3 this state, or to this state and one or more other states each of
4 which has a tax rate equal to or greater than the rate under Section
5 171.002(a)(2), by the corporation and the related party exceeds the
6 tax that would have been paid by the corporation if the royalty
7 payment or interest payment had not been made.

8 (d) A corporation is not required to add back a management
9 fee paid to a related party to the extent that the transaction was
10 done for a valid business purpose and the fee was paid at arm's
11 length.

12 Sec. 171.1103. ADJUSTMENT TO INCOME AND EXPENSES BY
13 COMPTROLLER. (a) The comptroller may distribute, apportion, or
14 allocate gross income, deductions, credits, or allowances between
15 or among two or more organizations, trades, or businesses, whether
16 or not incorporated, whether or not organized in the United States,
17 and whether or not affiliated, if:

18 (1) the organizations, trades, or businesses are owned
19 or controlled directly or indirectly by the same interests; and

20 (2) the comptroller determines that the distribution,
21 apportionment, or allocation is necessary to reflect an arm's
22 length standard, within the meaning of 26 C.F.R. Section 1.482-1,
23 and to clearly reflect the income of those organizations, trades,
24 or businesses.

25 (b) The comptroller shall apply the administrative and
26 judicial interpretations of Section 482, Internal Revenue Code, in
27 administering this section.

PART D. TRANSITIONAL PROVISIONS

SECTION 2D.01. (a) Except as otherwise provided by this article, this article takes effect November 1, 2005, and applies to reports originally due on or after that date.

(b) For a corporation becoming subject to the franchise tax under this article:

(1) income or losses, and related gross receipts, occurring before January 1, 2005, may not be considered for purposes of the earned surplus component, or for apportionment purposes for the taxable capital component;

(2) a corporation subject to the franchise tax on January 1, 2006, for which January 1, 2006, is not the beginning date, shall file an annual report due May 15, 2006, based on the period:

(A) beginning on the later of:

(i) January 1, 2005; or

(ii) the date the corporation was organized in this state or, if a foreign corporation, the date it began doing business in this state; and

(B) ending on the date the corporation's last accounting period ends in 2005 or, if none, on December 31, 2005; and

(3) a corporation subject to the earned surplus component of the franchise tax at any time after October 31, 2005, and before January 1, 2006, but not subject to the earned surplus component on January 1, 2006, shall file a final report computed on net taxable earned surplus, for the privilege of doing business at

1 any time after October 31, 2005, and before January 1, 2006, based
2 on the period:

3 (A) beginning on the later of:

4 (i) January 1, 2005; or

5 (ii) the date the corporation was organized
6 in this state or, if a foreign corporation, the date it began doing
7 business in this state; and

8 (B) ending on the date the corporation became no
9 longer subject to the earned surplus component of the tax.

10 ARTICLE 3. SALES AND USE TAXES

11 PART A. STATE SALES AND USE TAXES

12 SECTION 3A.01. Section 151.0031, Tax Code, is amended to
13 read as follows:

14 Sec. 151.0031. "COMPUTER PROGRAM." "Computer program"
15 means a series of instructions that are coded for acceptance or use
16 by a computer system and that are designed to permit the computer
17 system to process data and provide results and information. The
18 series of instructions may be contained in or on magnetic tapes,
19 punched cards, printed instructions, or other tangible or
20 electronic media. For purposes of this chapter, the term includes a
21 computer program created or developed exclusively for a client who
22 retains all rights to the program.

23 SECTION 3A.02. Subchapter A, Chapter 151, Tax Code, is
24 amended by adding Section 151.0043 to read as follows:

25 Sec. 151.0043. "MOTOR VEHICLE REPAIR SERVICES." (a)
26 "Motor vehicle repair services" means the repair, remodeling,
27 maintenance, or restoration of a motor vehicle, including testing

1 or diagnostic services, body repair and painting, engine repair,
2 transmission repair, exhaust system repair, brake repair, and air
3 conditioning repair.

4 (b) "Motor vehicle repair services" does not include any
5 vehicle emissions tests required by law, safety inspection tests
6 required by law, and other similar tests required by law.

7 SECTION 3A.03. Section 151.0101(a), Tax Code, is amended to
8 read as follows:

9 (a) "Taxable services" means:

- 10 (1) amusement services;
11 (2) cable television services;
12 (3) personal services;
13 (4) motor vehicle parking and storage services;
14 (5) the repair, remodeling, maintenance, and
15 restoration of tangible personal property, including motor vehicle
16 repair services, except:

17 (A) aircraft; and

18 (B) a ship, boat, or other vessel, other than:

19 (i) a taxable boat or motor as defined by
20 Section 160.001;

21 (ii) a sports fishing boat; or

22 (iii) any other vessel used for pleasure;

23 ~~[(C) the repair, maintenance, and restoration of~~
24 ~~a motor vehicle; and~~

25 ~~[(D) the repair, maintenance, creation, and~~
26 ~~restoration of a computer program, including its development and~~
27 ~~modification, not sold by the person performing the repair,~~

1 ~~maintenance, creation, or restoration service;]~~

2 (6) telecommunications services;

3 (7) credit reporting services;

4 (8) debt collection services;

5 (9) insurance services;

6 (10) information services;

7 (11) real property services;

8 (12) data processing services;

9 (13) real property repair and remodeling;

10 (14) security services;

11 (15) telephone answering services;

12 (16) Internet access service; and

13 (17) a sale by a transmission and distribution
14 utility, as defined in Section 31.002, Utilities Code, of
15 transmission or delivery of service directly to an electricity
16 end-use customer whose consumption of electricity is subject to
17 taxation under this chapter.

18 SECTION 3A.04. Section 151.051(b), Tax Code, is amended to
19 read as follows:

20 (b) The sales tax rate is 7.25 [~~6-1/4~~] percent of the sales
21 price of the taxable item sold.

22 SECTION 3A.05. Section 151.315, Tax Code, is amended to
23 read as follows:

24 Sec. 151.315. WATER. Water, other than water sold in a
25 sealed container, is exempted from the taxes imposed by this
26 chapter.

27 SECTION 3A.06. Section 151.419(b), Tax Code, is amended to

1 read as follows:

2 (b) The application must be accompanied with:

3 (1) an agreement that is signed by the applicant or a
4 responsible officer of an applicant corporation, that is in a form
5 prescribed by the comptroller, and that provides that the applicant
6 agrees to:

7 (A) accrue and pay all taxes imposed by
8 Subchapter D [~~of this chapter~~] on the storage and use of all taxable
9 items sold to or leased or rented by the permit holder unless the
10 items are exempted from the taxes imposed by this chapter; and

11 (B) pay the imposed taxes monthly on or before
12 the 20th day of the month following the end of each calendar month;
13 [~~and~~

14 [~~(C) waive the discount permitted by Section~~
15 ~~151.423 of this code on the payment of all taxes under the direct~~
16 ~~payment permit only;]~~

17 (2) a description, in the amount of detail that the
18 comptroller requires, of the accounting method by which the
19 applicant proposes to differentiate between taxable and exempt
20 transactions; and

21 (3) records establishing that the applicant is a
22 responsible person who annually purchases taxable items that have a
23 value when purchased of \$800,000 or more excluding the value of
24 taxable items for which resale certificates were or could have been
25 given.

26 SECTION 3A.07. Sections 151.424(a) and (c), Tax Code, are
27 amended to read as follows:

1 (a) A taxpayer who prepays the taxpayer's tax liability on
2 the basis of a reasonable estimate of the tax liability for a
3 quarter in which a prepayment is made or for a month in which a
4 prepayment is made may deduct and withhold 1.25 percent of the
5 amount of the prepayment [~~in addition to the amount permitted to be~~
6 ~~deducted and withheld under Section 151.423 of this code~~]. A
7 reasonable estimate of the tax liability must be at least 90 percent
8 of the tax ultimately due or the amount of tax paid in the same
9 quarter, or month, if a monthly prepayer, in the last preceding
10 year. Failure to prepay a reasonable estimate of the tax will
11 result in the loss of the entire prepayment discount.

12 (c) A taxpayer who prepays the tax liability as permitted by
13 this section must file a report when due as provided by this
14 chapter. The amount of a prepayment made by a taxpayer under this
15 section shall be credited against the amount of actual tax
16 liability of the taxpayer as shown on the tax report of the
17 taxpayer. If there is a tax liability owed by the taxpayer in
18 excess of the prepayment credit, the taxpayer shall send to the
19 comptroller the remaining tax liability at the time of filing the
20 quarterly or monthly report. [~~The taxpayer is entitled to the~~
21 ~~deduction permitted under Section 151.423 of this code on the~~
22 ~~amount of the remaining tax liability.~~]

23 SECTION 3A.08. Section 151.425, Tax Code, is amended to
24 read as follows:

25 Sec. 151.425. FORFEITURE OF DISCOUNT OR REIMBURSEMENT. If
26 a taxpayer fails to file a report required by this chapter when due
27 or to pay the tax when due, the taxpayer forfeits any claim to a

1 ~~[deduction or]~~ discount allowed under ~~[Section 151.423 or]~~ Section
2 151.424 ~~[of this code]~~.

3 SECTION 3A.09. Section 151.428(c), Tax Code, is amended to
4 read as follows:

5 (c) The reporting, collection, refund, and penalty
6 provisions of this chapter and Subtitle B ~~[of this title]~~ apply to
7 the payments required by this section, except that Section
8 ~~[Sections 151.423 and]~~ 151.424 does ~~[of this code do]~~ not apply to
9 this section.

10 SECTION 3A.10. Section 152.047(a), Tax Code, is amended to
11 read as follows:

12 (a) Except as inconsistent with this chapter and rules
13 adopted under this chapter, the seller of a motor vehicle shall
14 report and pay the tax imposed on a seller-financed sale to the
15 comptroller on the seller's receipts from seller-financed sales in
16 the same manner as the sales tax is reported and paid by a retailer
17 under Sections 151.401, 151.402, 151.405, 151.406, 151.409,
18 ~~[151.423,]~~ 151.424, and 151.425.

19 SECTION 3A.11. Section 151.423, Tax Code, is repealed.

20 SECTION 3A.12. There are exempted from the taxes imposed by
21 Chapter 151, Tax Code, the receipts from the sale, use, storage,
22 rental, or other consumption in this state of services that became
23 subject to the taxes because of the terms of this part and that are
24 the subject of a written contract or bid entered into on or before
25 August 1, 2005. The exemption provided by this section expires
26 September 1, 2007.

27 SECTION 3A.13. (a) Except as otherwise provided by this

1 section, this part takes effect September 1, 2005, if this Act
2 receives a vote of two-thirds of all the members elected to each
3 house, as provided by Section 39, Article III, Texas Constitution.
4 If this Act does not receive the vote necessary for effect on that
5 date, this part takes effect November 1, 2005.

6 (b) Section 151.051(b), Tax Code, as amended by this part,
7 takes effect October 1, 2005, if this Act receives a vote of
8 two-thirds of all the members elected to each house, as provided by
9 Section 39, Article III, Texas Constitution. If this Act does not
10 receive the vote necessary for effect on that date, Section
11 151.051(b), Tax Code, takes effect January 1, 2006.

12 PART B. MOTOR VEHICLE SALES AND USE TAX

13 SECTION 3B.01. Section 152.002, Tax Code, is amended by
14 adding Subsection (f) to read as follows:

15 (f) Notwithstanding Subsection (a), the total consideration
16 of a used motor vehicle is the amount on which the tax is computed as
17 provided by Section 152.0412.

18 SECTION 3B.02. Section 152.021(b), Tax Code, is amended to
19 read as follows:

20 (b) The tax rate is 7.35 [~~6-1/4~~] percent of the total
21 consideration.

22 SECTION 3B.03. Section 152.022(b), Tax Code, is amended to
23 read as follows:

24 (b) The tax rate is 7.35 [~~6-1/4~~] percent of the total
25 consideration.

26 SECTION 3B.04. Section 152.026(b), Tax Code, is amended to
27 read as follows:

1 (b) The tax rate is 10 percent of the gross rental receipts
2 from the rental of a rented motor vehicle for 30 days or less and
3 7.35 [~~6-1/4~~] percent of the gross rental receipts from the rental of
4 a rented motor vehicle for longer than 30 days.

5 SECTION 3B.05. Section 152.028(b), Tax Code, is amended to
6 read as follows:

7 (b) The tax rate is 7.35 [~~6-1/4~~] percent of the total
8 consideration.

9 SECTION 3B.06. Section 152.041(a), Tax Code, is amended to
10 read as follows:

11 (a) The tax assessor-collector of the county in which an
12 application for registration or for a Texas certificate of title is
13 made shall collect taxes imposed by this chapter, subject to
14 Section 152.0412, unless another person is required by this chapter
15 to collect the taxes.

16 SECTION 3B.07. Subchapter C, Chapter 152, Tax Code, is
17 amended by adding Section 152.0412 to read as follows:

18 Sec. 152.0412. STANDARD PRESUMPTIVE VALUE; USE BY TAX
19 ASSESSOR-COLLECTOR. (a) In this section, "standard presumptive
20 value" means the average retail value of a motor vehicle as
21 determined by the Texas Department of Transportation, based on a
22 nationally recognized motor vehicle industry reporting service.

23 (b) If the amount paid for a motor vehicle subject to the tax
24 imposed by this chapter is equal to or greater than the standard
25 presumptive value of the vehicle, a county tax assessor-collector
26 shall compute the tax on the amount paid.

27 (c) If the amount paid for a motor vehicle subject to the tax

1 imposed by this chapter is less than the standard presumptive value
2 of the vehicle, a county tax assessor-collector shall compute the
3 tax on the standard presumptive value unless the purchaser
4 establishes the retail value of the vehicle as provided by
5 Subsection (d).

6 (d) A county tax assessor-collector shall compute the tax
7 imposed by this chapter on the retail value of a motor vehicle if:

8 (1) the retail value is shown on an appraisal
9 certified by an adjuster licensed under Chapter 4101, Insurance
10 Code, or by a motor vehicle dealer operating under Subchapter B,
11 Chapter 503, Transportation Code;

12 (2) the appraisal is on a form prescribed by the
13 comptroller for that purpose; and

14 (3) the purchaser of the vehicle obtains the appraisal
15 not later than the 20th day after the date of purchase.

16 (e) On request, a motor vehicle dealer operating under
17 Subchapter B, Chapter 503, Transportation Code, shall provide a
18 certified appraisal of the retail value of a motor vehicle. The
19 comptroller by rule shall establish a fee that a dealer may charge
20 for providing the certified appraisal. The county tax
21 assessor-collector shall retain a copy of a certified appraisal
22 received under this section for a period prescribed by the
23 comptroller.

24 (f) The Texas Department of Transportation shall maintain
25 information on the standard presumptive values of motor vehicles as
26 part of the department's registration and title system. The
27 department shall update the information at least quarterly each

1 calendar year.

2 (g) This section does not apply to a transaction described
3 by Section 152.024 or 152.025.

4 SECTION 3B.08. Not later than November 1, 2005, the Texas
5 Department of Transportation shall:

6 (1) establish standard presumptive values for motor
7 vehicles as provided by Section 152.0412, Tax Code, as added by this
8 part;

9 (2) modify the department's registration and title
10 system as needed to include that information and administer that
11 section; and

12 (3) make that information available through the system
13 to all county tax assessor-collectors.

14 SECTION 3B.09. (a) Except as provided by Subsection (b) of
15 this section, this part takes effect September 1, 2005, if this Act
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas Constitution.
18 If this Act does not receive the vote necessary for effect on that
19 date, this part takes effect on the first day of the first month
20 that begins on or after the 91st day after the last day of the
21 legislative session.

22 (b) Section 152.0412, Tax Code, as added by this part, takes
23 effect November 1, 2005.

24 PART C. BOAT AND BOAT MOTOR SALES AND USE TAX

25 SECTION 3C.01. Section 160.021(b), Tax Code, is amended to
26 read as follows:

27 (b) The tax rate is 7.35 [~~6-1/4~~] percent of the total

1 consideration.

2 SECTION 3C.02. Section 160.022(b), Tax Code, is amended to
3 read as follows:

4 (b) The tax rate is 7.35 [~~6-1/4~~] percent of the total
5 consideration.

6 SECTION 3C.03. This part takes effect September 1, 2005, if
7 this Act receives a vote of two-thirds of all the members elected to
8 each house, as provided by Section 39, Article III, Texas
9 Constitution. If this Act does not receive the vote necessary for
10 effect on that date, this part takes effect November 1, 2005.

11 ARTICLE 4. CIGARETTE AND TOBACCO PRODUCTS TAXES

12 SECTION 4.01. Section 154.021(b), Tax Code, is amended to
13 read as follows:

14 (b) The tax rates are:

15 (1) \$70.50 [~~\$20.50~~] per thousand on cigarettes
16 weighing three pounds or less per thousand; and

17 (2) the rate provided by Subdivision (1) plus \$2.10
18 per thousand on cigarettes weighing more than three pounds per
19 thousand.

20 SECTION 4.02. Section 155.021(b), Tax Code, is amended to
21 read as follows:

22 (b) The tax rates are:

23 (1) 1.25 cents [~~one cent~~] per 10 or fraction of 10 on
24 cigars weighing three pounds or less per thousand;

25 (2) \$9.375 [~~\$7.50~~] per thousand on cigars that:

26 (A) weigh more than three pounds per thousand;

27 and

1 (B) sell at factory list price, exclusive of any
2 trade discount, special discount, or deal, for 3.3 cents or less
3 each;

4 (3) \$13.75 [~~\$11~~] per thousand on cigars that:

5 (A) weigh more than three pounds per thousand;

6 (B) sell at factory list price, exclusive of any
7 trade discount, special discount, or deal, for more than 3.3 cents
8 each; and

9 (C) contain no substantial amount of nontobacco
10 ingredients; and

11 (4) \$18.75 [~~\$15~~] per thousand on cigars that:

12 (A) weigh more than three pounds per thousand;

13 (B) sell at factory list price, exclusive of any
14 trade discount, special discount, or deal, for more than 3.3 cents
15 each; and

16 (C) contain a substantial amount of nontobacco
17 ingredients.

18 SECTION 4.03. Section 155.0211(b), Tax Code, is amended to
19 read as follows:

20 (b) The tax rate for tobacco products other than cigars is
21 40 [~~35.213~~] percent of the manufacturer's list price, exclusive of
22 any trade discount, special discount, or deal.

23 SECTION 4.04. This article takes effect September 1, 2005,
24 if this Act receives a vote of two-thirds of all the members elected
25 to each house, as provided by Section 39, Article III, Texas
26 Constitution. If this Act does not receive the vote necessary for
27 effect on that date, this article takes effect November 1, 2005.

ARTICLE 5. COLLECTION OF DELINQUENT OBLIGATIONS TO STATE

SECTION 5.01. Section 403.019(c), Government Code, is amended to read as follows:

(c) A contract under this section is not valid unless approved by the attorney general. The attorney general shall approve a contract if the attorney general determines that the contract complies with the requirements of this section, that the contract does not conflict with any contract formed under Section 2107.003(b), and that the contract ~~and~~ is in the best interest of the state. No judicial action by any person on behalf of the state under a contract authorized and approved by this section may be brought unless approved by the attorney general.

SECTION 5.02. Section 2107.003, Government Code, is amended to read as follows:

Sec. 2107.003. COLLECTION BY ATTORNEY GENERAL, COMPTROLLER, OR OUTSIDE AGENT. (a) Except as provided by Section 2107.004 ~~[Subsection (c)]~~, a state agency shall report an uncollected and delinquent obligation to ~~[request]~~ the attorney general for collection. The state agency must report the obligation on or before the 120th day after the date the obligation becomes past due or delinquent ~~[to collect an obligation before the agency may employ, retain, or contract with a person other than a full-time employee of the state agency to collect the obligation].~~

(b) The attorney general:

(1) shall provide legal services for collection of the obligation;

(2) may authorize the requesting state agency to

1 employ, retain, or contract, subject to approval by the attorney
2 general, with one or more persons to collect the obligation; or

3 (3) if the attorney general determines it to be
4 economical and in the best interest of the state, may contract with
5 one or more persons [~~a person other than a full-time employee of the~~
6 ~~agency~~] to collect the [~~an~~] obligation [~~that the attorney general~~
7 ~~cannot collect~~].

8 (c) The comptroller may employ, retain, or contract with a
9 person other than a full-time state employee to collect delinquent
10 obligations that are owed the comptroller in the comptroller's
11 official capacity, are not collected through normal collection
12 procedures, and do not meet the guidelines adopted for collection
13 by the attorney general. A proposed contract under this subsection
14 shall be reviewed by the attorney general and may include a
15 collection fee computed on the amounts collected under the
16 contract.

17 (d) The agency contracting under Subsection (b) is entitled
18 to recover from the obligor, in addition to the amount of the
19 obligation, the costs incurred in undertaking the collection,
20 including the costs of a contract under this section. The obligor
21 is liable for costs of recovery under this section in an amount
22 equal to 30 percent of the sum of the amount of the obligation and
23 any penalty and interest due on the obligation.

24 (e) A contract formed under Subsection (b) must provide for
25 the compensation due to the contractor. The amount of the
26 compensation shall be equal to 30 percent of the sum of the
27 collected amount of:

1 (1) the obligation;

2 (2) any penalty; and

3 (3) any interest.

4 (f) A contract formed under Subsection (b) or (c) may permit
5 or require the contractor to pursue a judicial action to collect the
6 amount of the obligation in a proper court in or outside of this
7 state.

8 (g) In a suit in a Texas state court brought by a contractor
9 to collect an obligation under this section, the state is not:

10 (1) required to post security for costs;

11 (2) liable for costs; and

12 (3) liable for fees for:

13 (A) service of process;

14 (B) attorneys ad litem;

15 (C) arbitration; or

16 (D) mediation.

17 (h) Notwithstanding any other law, an amount collected
18 under a contract formed under Subsection (b), including the costs
19 of recovery and court costs or other costs, shall be deposited to
20 the credit of the general revenue fund. The contracting agency
21 shall pay the compensation due under the contract to the contractor
22 and shall pay to the applicable court any court costs collected.

23 (i) The contracting agency shall require a person
24 contracting under Subsection (b) to post a bond or other security in
25 an amount the contracting agency determines is sufficient to cover
26 all revenue or other property of the state that is expected to come
27 into the possession or control of the contractor in the course of

1 providing contract services.

2 (j) A person who contracts under Subsection (b) is an agent
3 of this state for purposes of determining priority of a claim to be
4 collected under the contract with respect to claims of other
5 creditors. The contractor does not exercise any sovereign power of
6 the state.

7 (k) The contracting state agency may provide a person
8 contracting under Subsection (b) any information, including
9 confidential information, that the agency is not prohibited from
10 sharing under an agreement with another state or with the United
11 States and that is:

- 12 (1) in the custody of the agency holding the claim; and
13 (2) necessary to the collection of the obligation.

14 (l) A person acting under a contract formed under Subsection
15 (b) or (c) and each employee or agent of that person is subject to
16 all prohibitions against the disclosure of confidential
17 information obtained from the contracting agency, the reporting
18 state agency, or their employees. A contractor or the contractor's
19 employee or agent who discloses confidential information in
20 violation of the prohibition is subject to the same penalties for
21 that disclosure as would apply to the contracting agency or its
22 employees.

23 (m) The contracting agency shall require a person who
24 contracts under Subsection (b) to obtain and maintain insurance
25 adequate to provide reasonable coverage for damages negligently,
26 recklessly, or intentionally caused by the contractor or the
27 contractor's employee or agent in the course of collecting an

1 obligation under the contract and to protect this state from
2 liability for those damages. The state is not liable for and may
3 not indemnify a person acting under a contract under Subsection (b)
4 for damages negligently, recklessly, or intentionally caused by the
5 contractor or the contractor's employee or agent in the course of
6 collecting an obligation under the contract.

7 (n) In addition to grounds for termination provided by the
8 contract terms, the attorney general or the contracting agency, as
9 applicable, may terminate a contract formed under Subsection (b) if
10 the contractor or the contractor's employee or agent:

11 (1) violates the federal Fair Debt Collection
12 Practices Act (15 U.S.C. Section 1692 et seq.);

13 (2) discloses confidential information to a person not
14 authorized to receive the information; or

15 (3) performs any act that results in a final judgment
16 for damages against this state.

17 SECTION 5.03. Section 2254.102(c), Government Code, is
18 amended to read as follows:

19 (c) This subchapter does not apply to a contract:

20 (1) with an agency to collect an obligation under
21 Section 2107.003(b); or

22 (2) for legal services entered into by an institution
23 of higher education under Section 153.006, Education Code.

24 SECTION 5.04. Except as otherwise provided by this Act,
25 this article takes effect immediately if this Act receives a vote of
26 two-thirds of all the members elected to each house, as provided by
27 Section 39, Article III, Texas Constitution. If this Act does not

1 receive the vote necessary for immediate effect, this article takes
2 effect on the 91st day after the last day of the legislative
3 session.

4 ARTICLE 6. EFFECTIVE DATE

5 SECTION 6.01. (a) Except as provided by Subsection (b) of
6 this section, this Act takes effect September 1, 2005, if this Act
7 receives a vote of two-thirds of all the members elected to each
8 house, as provided by Section 39, Article III, Texas Constitution.
9 If this Act does not receive the vote necessary for effect on that
10 date, this Act takes effect November 1, 2005.

11 (b) If a section, part, or article of this Act provides a
12 different effective date than provided by Subsection (a) of this
13 section, that section, part, or article takes effect according to
14 its terms.