

By: Keffer of Eastland

H.B. No. 3

A BILL TO BE ENTITLED

AN ACT

relating to property tax relief and protection of taxpayers, taxes and fees, and other matters relating to the financing of public schools; providing civil and criminal penalties.

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

ARTICLE 1. SCHOOL PROPERTY TAX RELIEF

PART A. SCHOOL PROPERTY TAX RELIEF

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

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

(1) \$1.10 [~~\$1.50~~] on the \$100 valuation of taxable property in the district; and

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

(d-1) Notwithstanding Subsection (d), for the 2005 tax year, a proposition submitted to authorize the levy of maintenance taxes must include the question of whether the governing board or

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

5 (1) \$1.15 on the \$100 valuation of taxable property in  
6 the district; and

7 (2) \$0.15 on the \$100 valuation of taxable property in  
8 the district for enrichment, as authorized by an election as  
9 provided by Chapter 42.

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

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

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

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

22 (e) An election held before January 1, 2005, authorizing a  
23 maintenance tax at a rate of at least \$1.15 on the \$100 valuation of  
24 taxable property in the district is sufficient to authorize a rate  
25 of \$1.15 or less for the 2005 tax year. An election held before  
26 January 1, 2006, authorizing a maintenance tax at a rate of at least  
27 \$1.10 on the \$100 valuation of taxable property in the district is

1 sufficient to authorize a rate of \$1.10 or less for the 2006 tax  
2 year.

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

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

7 PART B. BUY-DOWN OF SCHOOL DISTRICT TAXES

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

10 SUBCHAPTER O. DISTRIBUTION OF INCREASES

11 IN AVAILABLE STATE REVENUE FOR SCHOOL DISTRICT

12 TAX RATE REDUCTION

13 Sec. 403.351. DEFINITIONS. In this subchapter:

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

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

25 Sec. 403.352. CERTIFICATION OF INCREASE IN AVAILABLE STATE  
26 REVENUE. In the statement required by Section 49a, Article III,  
27 Texas Constitution, in advance of a regular session of the

1 legislature, the comptroller shall certify:

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

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

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

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

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

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

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

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

8 SUBCHAPTER P. SCHOOL PROPERTY TAX RELIEF FUND

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

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

16 (a) Not later than the effective date of \_\_B. No. \_\_, 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 \_\_.B. No.  
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;

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

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

(4) the district's current debt rate.

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

## ARTICLE 2. REFORMED FRANCHISE TAX

SECTION 2.01. Subchapter A, Chapter 171, Tax Code, is amended to read as follows:

### SUBCHAPTER A. TAX IMPOSED

Sec. 171.001. TAX IMPOSED. (a) A franchise tax is imposed on[+]

[~~(1)~~] each taxable entity [~~corporation~~] that does business in this state or that is chartered or organized 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           (b) In this chapter:

4           (1) "Banking corporation" means each state, national,  
5 domestic, or foreign bank, whether organized under the laws of this  
6 state, another state, or another country, or under federal law,  
7 including a limited banking association organized under Subtitle A,  
8 Title 3, Finance Code, and each bank organized under Section 25(a),  
9 Federal Reserve Act (12 U.S.C. Secs. 611-631) (edge corporations),  
10 but does not include a bank holding company as that term is defined  
11 by Section 2, Bank Holding Company Act of 1956 (12 U.S.C. Sec.  
12 1841).

13           (2) "Beginning date" means:

14           (A) for a taxable entity ~~[corporation]~~ chartered  
15 or organized in this state, the date on which the taxable entity's  
16 ~~[corporation's]~~ charter or organization takes effect; and

17           (B) for any other taxable entity ~~[a foreign~~  
18 ~~corporation]~~, the date on which the taxable entity ~~[corporation]~~  
19 begins doing business in this state.

20           (3) "Corporation" includes:

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

23           (B) a savings and loan association; and

24           (C) a banking corporation.

25           (4) "Charter" includes a limited liability company's  
26 certificate of organization, a limited partnership's certificate  
27 of limited partnership, and the registration of a limited liability

1 partnership.

2 (5) "Internal Revenue Code" means the Internal Revenue  
3 Code of 1986 in effect [~~for the federal tax year beginning~~] on [~~or~~  
4 ~~after~~] January 1, 2005, not including any changes made by federal  
5 law after that date [~~1996, and before January 1, 1997~~], and any  
6 regulations adopted under that code [~~applicable to that period~~].

7 (6) "Officer" and "director" include a limited  
8 liability company's directors and managers and a limited banking  
9 association's directors and managers and participants if there are  
10 no directors or managers.

11 (7) "Savings and loan association" means a savings and  
12 loan association or savings bank, whether organized under the laws  
13 of this state, another state, or another country, or under federal  
14 law.

15 (8) "Shareholder" includes a limited liability  
16 company's member and a limited banking association's participant.

17 (9-a) "Taxable entity" includes, except as provided by  
18 Subdivision (9-b):

19 (A) a corporation;  
20 (B) a partnership; and  
21 (C) any entity that does business in this state  
22 or that is chartered or organized in this state, including an entity  
23 described by Subdivision (9-c).

24 (9-b) "Taxable entity" does not include, except as  
25 provided by Subdivision (9-c):

26 (A) an entity that is:  
27 (i) a grantor trust as defined by Sections

1 671 and 7701(a)(30)(E), Internal Revenue Code, all of the grantors  
2 and beneficiaries of which are natural persons or charitable  
3 entities as described in Section 501(c)(3), Internal Revenue Code,  
4 excluding a trust taxable as a business entity pursuant to Treasury  
5 Regulation Section 301.7701-4(b);

6 (ii) an estate of a natural person as  
7 defined by Section 7701(a)(30)(D), Internal Revenue Code,  
8 excluding an estate taxable as a business entity pursuant to  
9 Treasury Regulation Section 301.7701-4(b); or

10 (iii) an escrow;

11 (B) a real estate investment trust as defined by  
12 Section 856, Internal Revenue Code, and its "qualified REIT  
13 subsidiary" entities as defined by Section 856(i)(2), Internal  
14 Revenue Code;

15 (C) an entity other than a corporation or a  
16 limited liability company that is:

17 (i) a publicly traded partnership, as  
18 defined by Section 7704(b)(1), Internal Revenue Code, interests in  
19 which are listed and traded in an established national securities  
20 market and that is treated as a partnership for federal income tax  
21 purposes; and

22 (ii) a limited partnership at least 90  
23 percent of whose interests are owned directly or indirectly by an  
24 entity described in Subparagraph (i) and at least 90 percent of  
25 whose income constitutes qualifying income as defined by Section  
26 7704(d), Internal Revenue Code;

27 (D) a family limited partnership in which at

1 least 80 percent of the interests are held, directly or indirectly,  
2 by members of the same family, including an individual's ancestors,  
3 lineal descendants, spouse, brothers and sisters by the whole or  
4 half blood, and the estate of any of these persons, and that is a  
5 limited partnership:

6 (i) formed pursuant to the Texas Revised  
7 Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil  
8 Statutes);

9 (ii) formed pursuant to the limited  
10 partnership law of any other state; or

11 (iii) treated as a partnership for federal  
12 income tax purposes;

13 (E) a regulated investment company as defined by  
14 Section 851, Internal Revenue Code;

15 (F) a real estate mortgage investment conduit as  
16 defined by Section 860D, Internal Revenue Code;

17 (G) a passive investment partnership as  
18 described by Subparagraph (i) or (ii), at least 90 percent of whose  
19 federal gross income is composed of passive investment income,  
20 including dividends, interest, capital gains, foreign currency  
21 exchange gain, periodic and nonperiodic payments with respect to  
22 notional principal contracts, option premiums, cash settlement or  
23 termination payments with respect to a financial instrument,  
24 royalties from the license of intangible property and nonoperating  
25 mineral interests, rents from the lease of real property provided  
26 that the lessor does not furnish the lessee with any services or  
27 utilities other than customary cleaning and security services, and

distributive shares of partnership income and income from a limited liability company, and the partnership is:

(i) formed pursuant to the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes); or

(ii) formed pursuant to the limited partnership law of any other state or a foreign country;

(H) a sole proprietorship;

(I) a general partnership;

(J) an entity, arrangement, or investment vehicle without any employees that is used solely for a finance, securitization, or monetization purpose; or

(K) a trust:

(i) that is taxable as a trust under Section 641, Internal Revenue Code;

(ii) all of the beneficiaries of which are natural persons or charitable entities as defined in Section 501(c)(3), Internal Revenue Code;

(iii) that is not a trust taxable as a business entity pursuant to Treasury Regulation Section 301.7701-4(b);

(iv) at least 90 percent of whose federal gross income consists of passive investment income as described under Paragraph (G); and

(v) that is organized as a trust and is described in Section 7701(a)(30)(E), Internal Revenue Code.

(9-c)(A) A family limited partnership as described in

1 Subdivision (9-b) is a taxable entity under this chapter if the  
2 partnership:

3 (i) is not a passive investment partnership  
4 as defined under Subdivision (9-b)(G); and

5 (ii) conducts an active trade or business.

6 (B) An entity conducts an active trade or  
7 business if:

8 (i) the activities being carried on by the  
9 entity include one or more active operations that form a part of the  
10 process of earning income or profit; and

11 (ii) the entity performs active management  
12 and operational functions.

13 (C) Activities performed by the entity shall  
14 include activities performed by persons outside the entity,  
15 including independent contractors, to the extent such persons  
16 perform services on behalf of the entity and those services  
17 constitute all or part of the entity's trade or business.

18 (D) An entity conducts an active trade or  
19 business if assets held by the entity are used in the active trade  
20 or business of one or more related entities.

21 (E) For purposes of this subdivision, the  
22 ownership of a royalty interest or a non-operating working interest  
23 in mineral rights shall not constitute conduct of an active trade or  
24 business.

25 (c) The tax imposed under this chapter extends to the limits  
26 of the United States Constitution and the federal law adopted under  
27 the United States constitution.



1        (d) For purposes of Subsection (a), a taxable entity does  
2 business in this state if the entity is a foreign entity and is:

3            (1) holding a partnership interest, including an  
4 interest as an assignee, as a general partner in a general  
5 partnership that is doing business in this state;

6            (2) holding a partnership interest, including an  
7 interest as an assignee, as a general partner in a limited  
8 partnership that is doing business in this state; or

9            (3) holding a partnership interest, including an  
10 interest as an assignee, as a limited partner in a limited  
11 partnership that is doing business in this state.

12        Sec. 171.0011. ELECTION OF RATES. (a) Except as otherwise  
13 provided by this section and Section 171.0012, a taxable entity  
14 shall elect to pay the tax imposed under this chapter at:

15            (1) the rate provided by Section 171.002; or

16            (2) the alternate rate provided by Section 171.003.

17        (b) The election cannot be changed until after the third  
18 anniversary of the date the election is made.

19        (c) A taxable entity that is in the business of leasing  
20 employees:

21            (1) may not elect to pay the tax imposed under this  
22 chapter at the rate provided by Section 171.002 and shall pay the  
23 tax imposed under this chapter at the alternate rate provided by  
24 Section 171.003; and

25            (2) for the purposes of this chapter, is considered as  
26 having elected to pay the tax imposed under this chapter at the  
27 alternate rate provided by Section 171.003.

1        (d) A taxable entity that is an airline:

2            (1) may not elect to pay the tax imposed under this  
3 chapter at the alternate rate provided by Section 171.003 and shall  
4 pay the tax imposed under this chapter at the rate provided by  
5 Section 171.002;

6            (2) for the purposes of this chapter, is considered as  
7 having elected to pay the tax imposed under this chapter at the rate  
8 provided by Section 171.002; and

9            (3) is not subject to the minimum tax liability under  
10 Section 171.0013.

11        (e) The comptroller shall promulgate a form for a taxable  
12 entity to use to make an election under this section. If the  
13 taxable entity is an entity other than a corporation and any  
14 interests in the entity are owned by natural persons, the election  
15 form must be signed by each of those natural persons and by an  
16 authorized officer of the entity. The election form shall provide  
17 that the taxable entity and those natural persons agree that the  
18 taxable earned surplus of the entity shall be calculated pursuant  
19 to this chapter without regard to any exclusion, exemption, or  
20 prohibition in Section 24, Article VIII, Texas Constitution.

21        Sec. 171.0012. MANDATORY ELECTION FOR ALL MEMBERS OF  
22 AFFILIATED GROUP. (a) In this section:

23            (1) "Affiliated group" means one or more chains of  
24 entities connected through ownership with a common parent, but only  
25 if the common parent has a controlling interest in at least one of  
26 the connected entities and maintains a controlling interest  
27 indirectly through the ownership chain in the other connected

1 entities.

2 (2) "Controlling interest" means:

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

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

12 (b) Notwithstanding any other provision of this chapter,  
13 all entities that are part of the same affiliated group must make  
14 the same election and must pay the tax imposed under this chapter at  
15 the rate provided by either Section 171.002 or the alternate rate  
16 provided by Section 171.003.

17 (c) For the purposes of this chapter, a taxable entity  
18 required to elect the same rate as all the other members of its  
19 affiliated group under this section is considered as having elected  
20 to pay the tax imposed under this chapter at that rate.

21 Sec. 171.0013. MINIMUM TAX LIABILITY. (a) Except as  
22 provided by Section 171.0011(d)(3), the minimum tax liability for a  
23 taxable entity that elects to pay the tax under this chapter at the  
24 rate provided by Section 171.002 is an amount equal to 50 percent of  
25 the amount of tax the taxable entity would be liable for under this  
26 chapter if the taxable entity had elected to pay the tax under this  
27 chapter at the alternate rate provided by Section 171.003.

(b) The minimum tax liability for a taxable entity that elects to pay the tax under this chapter at the alternate rate provided by Section 171.003 is an amount equal to 50 percent of the amount of tax the taxable entity would be liable for under this chapter if the taxable entity had elected to pay the tax under this chapter at the rate provided by Section 171.002.

(c) This section does not apply to an entity that is not a taxable entity as defined by Section 171.001(b)(9-b).

Sec. 171.0014. ADDITIONAL TAX. (a) An additional tax is imposed on a taxable entity that has elected to pay the tax imposed by this chapter at the rate provided by Section 171.002 and during the period in which that election is in effect ~~[corporation that]~~ for any reason becomes no longer subject to the earned surplus component of the tax, without regard to whether the taxable entity ~~[corporation]~~ remains subject to the taxable capital component of the tax, other than through a valid election to pay the tax imposed under this chapter at the alternate rate provided by Section 171.003. An additional tax is imposed on a taxable entity that has elected to pay the tax imposed by this chapter at the alternate rate provided by Section 171.003 and during the period in which that election is in effect for any reason becomes no longer subject to the tax imposed under this chapter.

(b) The additional tax is equal to 4.5 percent of the taxable entity's ~~[corporation's]~~ net taxable earned surplus computed on the period beginning on the day after the last day for which the tax imposed on net taxable earned surplus was computed under Section 171.1532 and ending on the date the taxable entity

1   ~~[corporation]~~ is no longer subject to the earned surplus component  
2   of the tax.

3           (c) The additional tax imposed and any report required by  
4   the comptroller are due on the 60th day after the date the taxable  
5   entity ~~[corporation]~~ becomes no longer subject to the earned  
6   surplus component of the tax.

7           (d) Except as otherwise provided by this section, the  
8   provisions of this chapter apply to the tax imposed under this  
9   section.

10          Sec. 171.0015. RULES: AVOIDANCE OF DOUBLE TAXATION. (a)  
11   Except as provided by Section 171.0012, each entity shall be  
12   treated as a separate taxable entity.

13          (b) Wages, as that term is defined under Subchapter F,  
14   Chapter 201, Labor Code, that are paid by one taxable entity may not  
15   be included in the tax base of another taxable entity either  
16   directly, indirectly, or constructively for purposes of  
17   determining taxable wages under Subchapter C-1.

18          (c) A taxable entity shall be entitled to the dividends  
19   received deduction for dividends received in computing its earned  
20   surplus. For the purposes of this subsection, "dividends received  
21   deduction" means the deduction allowed by Section 243, Internal  
22   Revenue Code.

23          (d) Except as provided by Subsection (e), any taxable entity  
24   that is allocated a distributive share of income, gain, or capital  
25   from another taxable or exempt entity under federal income tax  
26   rules, including an actual distribution of income, gain, or  
27   capital, shall be entitled to exclude that amount in computing its

earned surplus for purposes of this chapter.

(e) Subsection (d) does not apply to the distributive share of income, gain, or capital from an interest in a publicly traded partnership, as defined by Section 171.001(b)(9-b)(C)(i), that is allocated to a taxable entity that is a direct owner of that interest. If the direct owner of that interest is not a taxable entity, Subsection (d) does not apply to the first upper-tier level of a taxable entity or entities, if any, that are indirect owners of that interest.

Sec. 171.002. RATES; COMPUTATION OF TAX. (a) Subject to the minimum tax liability of the taxable entity under Section 171.0013, the [The] rates of the franchise tax are for a taxable entity that elects to pay the tax at the rate provided by this section:

(1) 0.25 percent per year of privilege period of net taxable capital; and

(2) 4.5 percent of net taxable earned surplus.

(b) The amount of franchise tax on each taxable entity ~~[corporation]~~ is computed by adding the following:

(1) the amount calculated by applying the tax rate prescribed by Subsection (a)(1) to the taxable entity's ~~[corporation's]~~ net taxable capital; and

(2) the difference between:

(A) the amount calculated by applying the tax rate prescribed by Subsection (a)(2) to the taxable entity's ~~[corporation's]~~ net taxable earned surplus; and

(B) the amount determined under Subdivision (1).

(c) In making a computation under Subsection (b), an amount computed under Subsection (b)(1) or (b)(2) that is zero or less is computed as a zero.

Sec. 171.003. ALTERNATE RATE. Subject to the minimum tax liability of the taxable entity under Section 171.0013, the alternate rate of the franchise tax for a taxable entity that elects to pay the alternate rate is 1.15 percent of taxable wages as determined under Subchapter C-1.

Sec. 171.004. EXEMPTION FOR CERTAIN SMALL BUSINESSES.  
~~[(d)]~~ A taxable entity ~~[corporation]~~ is not required to pay any tax and is not considered to owe any tax for a period if:

(1) the amount of tax computed for the taxable entity ~~[corporation]~~ is less than \$100; or

(2) the amount of the taxable entity's ~~[corporation's]~~ gross receipts:

(A) from its entire business under Section 171.105 is less than \$150,000; and

(B) from its entire business under Section 171.1051, including the amount excepted under Section 171.1051(a), is less than \$150,000.

Sec. 171.005. RATE OF TAX FOR CORPORATION IN PROCESS OF LIQUIDATION. The franchise tax rate on a corporation in the process of liquidation, as defined by Section 171.102 ~~[of this code]~~, is the rate established by Section 171.002 ~~[of this code]~~.

SECTION 2.02. Subchapter B, Chapter 171, Tax Code, is amended by adding Section 171.088 to read as follows:

Sec. 171.088. EXEMPTION--NONCORPORATE TAXABLE ENTITY

1 ELIGIBLE FOR CERTAIN EXEMPTIONS. A taxable entity that is not a  
2 corporation but that, because of its activities, would qualify for  
3 a specific exemption under this subchapter if it were a corporation  
4 qualifies for the exemption and is exempt from the tax in the same  
5 manner and under the same conditions as a corporation.

6 SECTION 2.03. Section 171.101, Tax Code, is amended to read  
7 as follows:

8 Sec. 171.101. DETERMINATION OF NET TAXABLE CAPITAL. The  
9 ~~[(a) Except as provided by Subsections (b) and (c), the]~~ net  
10 taxable capital of a taxable entity ~~[corporation]~~ is computed by:

11 ~~(1) [adding the corporation's stated capital, as~~  
12 ~~defined by Article 1.02, Texas Business Corporation Act, and the~~  
13 ~~corporation's surplus, to determine the corporation's taxable~~  
14 ~~capital;~~

15 ~~[(2)]~~ apportioning the taxable entity's surplus  
16 ~~[corporation's taxable capital]~~ to this state as provided by  
17 Section 171.106(a) or (c), as applicable, to determine the taxable  
18 entity's ~~[corporation's]~~ apportioned taxable capital; and

19 (2) ~~[(3)]~~ subtracting from the amount computed under  
20 Subdivision (1) ~~[(2)]~~ any other allowable deductions to determine  
21 the taxable entity's ~~[corporation's]~~ net taxable capital.

22 ~~[(b) The net taxable capital of a limited liability company~~  
23 ~~is computed by:~~

24 ~~[(1) adding the company's members' contributions, as~~  
25 ~~provided for under the Texas Limited Liability Company Act, and~~  
26 ~~surplus to determine the company's taxable capital;~~

27 ~~[(2) apportioning the amount determined under~~



~~Subdivision (1) to this state in the same manner that the taxable capital of a corporation is apportioned to this state under Section 171.106(a) or (c), as applicable, to determine the company's apportioned taxable capital; and~~

~~[(3) subtracting from the amount computed under Subdivision (2) any other allowable deductions, to determine the company's net taxable capital.~~

~~[(c) The net taxable capital of a savings and loan association is computed by:~~

~~[(1) determining the association's net worth; and~~

~~[(2) apportioning the amount determined under Subdivision (1) to this state in the same manner that the taxable capital of a corporation is apportioned to this state under Section 171.106(a) to determine the association's net taxable capital.]~~

SECTION 2.04. Section 171.103, Tax Code, is amended to read as follows:

Sec. 171.103. DETERMINATION OF GROSS RECEIPTS FROM BUSINESS DONE IN THIS STATE FOR TAXABLE CAPITAL. In apportioning taxable capital, the gross receipts of a taxable entity ~~[corporation]~~ from its business done in this state is the sum of the taxable entity's ~~[corporation's]~~ receipts from:

(1) each sale of tangible personal property if the property is delivered or shipped to a buyer in this state regardless of the FOB point or another condition of the sale, and each sale of tangible personal property shipped from this state to a purchaser in another state in which the seller is not subject to taxation;

(2) each service performed in this state;

1 (3) each rental of property situated in this state;

2 (4) the use of a patent, copyright, trademark,  
3 franchise, or license in this state;

4 (5) each sale of real property located in this state,  
5 including royalties from oil, gas, or other mineral interests; and

6 (6) other business done in this state.

7 SECTION 2.05. Section 171.1032, Tax Code, is amended to  
8 read as follows:

9 Sec. 171.1032. DETERMINATION OF GROSS RECEIPTS FROM  
10 BUSINESS DONE IN THIS STATE FOR TAXABLE EARNED SURPLUS. (a) Except  
11 for the gross receipts of a taxable entity [~~corporation~~] that are  
12 subject to the provisions of Section 171.1061, in apportioning  
13 taxable earned surplus, the gross receipts of a taxable entity  
14 [~~corporation~~] from its business done in this state is the sum of the  
15 taxable entity's [~~corporation's~~] receipts from:

16 (1) each sale of tangible personal property if the  
17 property is delivered or shipped to a buyer in this state regardless  
18 of the FOB point or another condition of the sale, and each sale of  
19 tangible personal property shipped from this state to a purchaser  
20 in another state in which the seller is not subject to any tax on, or  
21 measured by, net income, without regard to whether the tax is  
22 imposed;

23 (2) each service performed in this state;

24 (3) each rental of property situated in this state;

25 (4) the use of a patent, copyright, trademark,  
26 franchise, or license in this state;

27 (5) each sale of real property located in this state,

including royalties from oil, gas, or other mineral interests; and

(6) ~~[each partnership or joint venture to the extent provided by Subsection (c), and~~

~~[(7)]~~ other business done in this state.

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

~~[(c) A corporation shall include in its gross receipts computed under Subsection (a) the corporation's share of the gross receipts of each partnership and joint venture of which the corporation is a part apportioned to this state as though the corporation directly earned the receipts, including receipts from business done with the corporation.]~~

SECTION 2.06. Section 171.104, Tax Code, is amended to read as follows:

Sec. 171.104. GROSS RECEIPTS FROM BUSINESS DONE IN TEXAS: DEDUCTION FOR FOOD AND MEDICINE RECEIPTS. A taxable entity ~~[corporation]~~ may deduct from its receipts includable under Section 171.103(1) ~~[of this code]~~ the amount of the taxable entity's ~~[corporation's]~~ receipts from sales of the following items, if the items are shipped from outside this state and the receipts would be

1 includable under Section 171.103(1) [~~of this code~~] in the absence  
2 of this section:

3 (1) food that is exempted from the Limited Sales,  
4 Excise, and Use Tax Act by Section 151.314(a) [~~of this code~~]; and

5 (2) health care supplies that are exempted from the  
6 Limited Sales, Excise, and Use Tax Act by Section 151.313 [~~of this~~  
7 ~~code~~].

8 SECTION 2.07. Section 171.105, Tax Code, is amended to read  
9 as follows:

10 Sec. 171.105. DETERMINATION OF GROSS RECEIPTS FROM ENTIRE  
11 BUSINESS FOR TAXABLE CAPITAL. (a) In apportioning taxable  
12 capital, the gross receipts of a taxable entity [~~corporation~~] from  
13 its entire business is the sum of the taxable entity's  
14 [~~corporation's~~] receipts from:

15 (1) each sale of the taxable entity's [~~corporation's~~]  
16 tangible personal property;

17 (2) each service, rental, or royalty; and

18 (3) other business.

19 (b) If a taxable entity [~~corporation~~] sells an investment or  
20 capital asset, the taxable entity's [~~corporation's~~] gross receipts  
21 from its entire business for taxable capital include only the net  
22 gain from the sale.

23 SECTION 2.08. Section 171.1051, Tax Code, is amended to  
24 read as follows:

25 Sec. 171.1051. DETERMINATION OF GROSS RECEIPTS FROM ENTIRE  
26 BUSINESS FOR TAXABLE EARNED SURPLUS. (a) Except for the gross  
27 receipts of a taxable entity [~~corporation~~] that are subject to the

1 provisions of Section 171.1061, in apportioning taxable earned  
2 surplus, the gross receipts of a taxable entity [~~corporation~~] from  
3 its entire business is the sum of the taxable entity's  
4 [~~corporation's~~] receipts from:

5 (1) each sale of the taxable entity's [~~corporation's~~]  
6 tangible personal property;

7 (2) each service, rental, or royalty; and

8 (3) [~~each partnership and joint venture as provided by~~  
9 ~~Subsection (d), and~~

10 [~~(4)~~] other business.

11 (b) If a taxable entity [~~corporation~~] sells an investment or  
12 capital asset, the taxable entity's [~~corporation's~~] gross receipts  
13 from its entire business for taxable earned surplus includes only  
14 the net gain from the sale.

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

24 [~~(d) A corporation shall include in its gross receipts~~  
25 ~~computed under Subsection (a) the corporation's share of the gross~~  
26 ~~receipts of each partnership and joint venture of which the~~  
27 ~~corporation is a part.]~~

SECTION 2.09. Sections 171.106(a)-(d), Tax Code, are amended to read as follows:

(a) Except as provided by Subsections (c) and (d), a taxable entity's ~~[corporation's]~~ taxable capital is apportioned to this state to determine the amount of the tax imposed under Section 171.002(b)(1) by multiplying the taxable entity's ~~[corporation's]~~ taxable capital by a fraction, the numerator of which is the taxable entity's ~~[corporation's]~~ gross receipts from business done in this state, as determined under Section 171.103, and the denominator of which is the taxable entity's ~~[corporation's]~~ gross receipts from its entire business, as determined under Section 171.105.

(b) Except as provided by Subsections (c) and (d), a taxable entity's ~~[corporation's]~~ taxable earned surplus is apportioned to this state to determine the amount of tax imposed under Section 171.002(b)(2) by multiplying the taxable earned surplus by a fraction, the numerator of which is the taxable entity's ~~[corporation's]~~ gross receipts from business done in this state, as determined under Section 171.1032, and the denominator of which is the taxable entity's ~~[corporation's]~~ gross receipts from its entire business, as determined under Section 171.1051.

(c) A taxable entity's ~~[corporation's]~~ taxable capital or earned surplus that is derived, directly or indirectly, from the sale of management, distribution, or administration services to or on behalf of a regulated investment company, including a taxable entity ~~[corporation]~~ that includes trustees or sponsors of employee benefit plans that have accounts in a regulated investment company, is apportioned to this state to determine the amount of the tax

1 imposed under Section 171.002 by multiplying the taxable entity's  
2 [~~corporation's~~] total taxable capital or earned surplus from the  
3 sale of services to or on behalf of a regulated investment company  
4 by a fraction, the numerator of which is the average of the sum of  
5 shares owned at the beginning of the year and the sum of shares  
6 owned at the end of the year by the investment company shareholders  
7 who are commercially domiciled in this state or, if the  
8 shareholders are individuals, are residents of this state, and the  
9 denominator of which is the average of the sum of shares owned at  
10 the beginning of the year and the sum of shares owned at the end of  
11 the year by all investment company shareholders. The taxable  
12 entity [~~corporation~~] shall make a separate computation to allocate  
13 taxable capital and earned surplus. In this subsection, "regulated  
14 investment company" has the meaning assigned by Section 851(a),  
15 Internal Revenue Code.

16 (d) A taxable entity's [~~corporation's~~] taxable capital or  
17 taxable earned surplus that is derived, directly or indirectly,  
18 from the sale of management, administration, or investment services  
19 to an employee retirement plan is apportioned to this state to  
20 determine the amount of the tax imposed under Section 171.002 by  
21 multiplying the taxable entity's [~~corporation's~~] total taxable  
22 capital or earned surplus from the sale of services to an employee  
23 retirement plan company by a fraction, the numerator of which is the  
24 average of the sum of beneficiaries domiciled in Texas at the  
25 beginning of the year and the sum of beneficiaries domiciled in  
26 Texas at the end of the year, and the denominator of which is the  
27 average of the sum of all beneficiaries at the beginning of the year

1 and the sum of all beneficiaries at the end of the year. The taxable  
2 entity [~~corporation~~] shall make a separate computation to apportion  
3 taxable capital and earned surplus. In this section, "employee  
4 retirement plan" means a plan or other arrangement that is  
5 qualified under Section 401(a), Internal Revenue Code, or satisfies  
6 the requirements of Section 403, Internal Revenue Code, or a  
7 government plan described in Section 414(d), Internal Revenue Code.  
8 The term does not include an individual retirement account or  
9 individual retirement annuity within the meaning of Section 408,  
10 Internal Revenue Code.

11 SECTION 2.10. Section 171.1061, Tax Code, is amended to  
12 read as follows:

13 Sec. 171.1061. ALLOCATION OF CERTAIN TAXABLE EARNED SURPLUS  
14 TO THIS STATE. An item of income included in a taxable entity's  
15 [~~corporation's~~] taxable earned surplus, except that portion  
16 derived from dividends and interest, that a state, other than this  
17 state, or a country, other than the United States, cannot tax  
18 because the activities generating that item of income do not have  
19 sufficient unitary connection with the taxable entity's  
20 [~~corporation's~~] other activities conducted within that state or  
21 country under the United States Constitution, is allocated to this  
22 state if the taxable entity's [~~corporation's~~] commercial domicile  
23 is in this state. Income that can only be allocated to the state of  
24 commercial domicile because the income has insufficient unitary  
25 connection with any other state or country shall be allocated to  
26 this state or another state or country net of expenses related to  
27 that income. A portion of a taxable entity's [~~corporation's~~]



1 taxable earned surplus allocated to this state under this section  
2 may not be apportioned under Section 171.110(a-4)(2)  
3 [~~171.110(a)(2)~~].

4 SECTION 2.11. Sections 171.107(b), (d), and (e), Tax Code,  
5 are amended to read as follows:

6 (b) A taxable entity [~~corporation~~] may deduct from its  
7 apportioned taxable capital the amortized cost of a solar energy  
8 device or from its apportioned taxable earned surplus 10 percent of  
9 the amortized cost of a solar energy device if:

10 (1) the device is acquired by the taxable entity  
11 [~~corporation~~] for heating or cooling or for the production of  
12 power;

13 (2) the device is used in this state by the taxable  
14 entity [~~corporation~~]; and

15 (3) the cost of the device is amortized in accordance  
16 with Subsection (c) [~~of this section~~].

17 (d) A taxable entity [~~corporation~~] that makes a deduction  
18 under this section shall file with the comptroller an amortization  
19 schedule showing the period in which a deduction is to be made. On  
20 the request of the comptroller, the taxable entity [~~corporation~~]  
21 shall file with the comptroller proof of the cost of the solar  
22 energy device or proof of the device's operation in this state.

23 (e) A taxable entity [~~corporation~~] may elect to make the  
24 deduction authorized by this section either from apportioned  
25 taxable capital or apportioned taxable earned surplus for each  
26 separate regular annual period. An election for an initial period  
27 applies to the second tax period and to the first regular annual

1 period.

2 SECTION 2.12. Sections 171.108(b), (d), and (e), Tax Code,  
3 as added by Section 4, H.B. No. 2201, Acts of the 79th Legislature,  
4 Regular Session, 2005, are amended to read as follows:

5 (b) A taxable entity [~~corporation~~] may deduct from its  
6 apportioned taxable capital the amortized cost of equipment or from  
7 its apportioned taxable earned surplus 10 percent of the amortized  
8 cost of equipment:

9 (1) that is used in a clean coal project;

10 (2) that is acquired by the taxable entity  
11 [~~corporation~~] for use in generation of electricity, production of  
12 process steam, or industrial production;

13 (3) that the taxable entity [~~corporation~~] uses in this  
14 state; and

15 (4) the cost of which is amortized in accordance with  
16 Subsection (c).

17 (d) A taxable entity [~~corporation~~] that makes a deduction  
18 under this section shall file with the comptroller an amortization  
19 schedule showing the period for which the deduction is to be made.  
20 On the request of the comptroller, the taxable entity [~~corporation~~]  
21 shall file with the comptroller proof of the cost of the equipment  
22 or proof of the equipment's operation in this state.

23 (e) A taxable entity [~~corporation~~] may elect to make the  
24 deduction authorized by this section from apportioned taxable  
25 capital or apportioned taxable earned surplus, but not from both,  
26 for each separate regular annual period. An election for an initial  
27 period applies to the second tax period and to the first regular

1 annual period.

2 SECTION 2.13. Section 171.109, Tax Code, is amended by  
3 amending Subsections (a), (b)-(f), (h), (j), (k), (m), and (n), by  
4 reenacting and amending Subsection (g), as amended by Chapters 801  
5 and 1198, Acts of the 71st Legislature, Regular Session, 1989, and  
6 by adding Subsection (a-2) to read as follows:

7 (a) In this chapter:

8 (1) "Surplus" or "taxable capital" means the net  
9 assets of a taxable entity [~~corporation minus its stated capital.~~  
10 ~~For a limited liability company, "surplus" means the net assets of~~  
11 ~~the company minus its members' contributions~~]. Surplus includes  
12 unrealized, estimated, or contingent losses or obligations or any  
13 writedown of assets other than those listed in Subsection (i) [~~of~~  
14 ~~this section~~] net of appropriate income tax provisions. The  
15 definition under this subdivision does not apply to earned surplus.

16 (2) "Net assets" means the total assets of a taxable  
17 entity [~~corporation~~] minus its total debts.

18 (3) "Debt" means any legally enforceable obligation  
19 measured in a certain amount of money which must be performed or  
20 paid within an ascertainable period of time or on demand.

21 (a-2) In this section, "distribution" includes a dividend.

22 (b) Except as otherwise provided in this section, a taxable  
23 entity [~~corporation~~] must compute its surplus, assets, and debts  
24 according to generally accepted accounting principles. If  
25 generally accepted accounting principles are unsettled or do not  
26 specify an accounting practice for a particular purpose related to  
27 the computation of surplus, assets, or debts, the comptroller by

1 rule may establish rules to specify the applicable accounting  
2 practice for that purpose.

3 (c) A taxable entity [~~corporation~~] whose taxable capital is  
4 less than \$1 million may report its surplus according to the method  
5 used in the taxable entity's [~~corporation's~~] most recent federal  
6 income tax return originally due on or before the date on which the  
7 taxable entity's [~~corporation's~~] franchise tax report is originally  
8 due. In determining if taxable capital is less than \$1 million, the  
9 taxable entity [~~corporation~~] shall apply the methods the taxable  
10 entity [~~corporation~~] used in computing that federal income tax  
11 return unless another method is required under this chapter.

12 (d) A taxable entity [~~corporation~~] shall report its surplus  
13 based solely on its own financial condition. Consolidated  
14 reporting of surplus is prohibited.

15 (e) A taxable entity [~~Unless the provisions of Section~~  
16 ~~171.111 apply due to an election under that section, a corporation~~]  
17 may not change the accounting methods used to compute its surplus  
18 more often than once every four years without the written consent of  
19 the comptroller. A change in accounting methods is not justified  
20 solely because it results in a reduction of tax liability.

21 (f) A taxable entity making a distribution [~~corporation~~  
22 ~~declaring dividends~~] shall exclude the distribution [~~those~~  
23 ~~dividends~~] from its taxable capital, and a taxable entity  
24 [~~corporation~~] receiving a distribution [~~dividends~~] shall include  
25 the distribution [~~those dividends~~] in its gross receipts and  
26 taxable capital as of the earlier of:

27 (1) the date the distribution is [~~dividends are~~]

1 declared, if the distribution is [~~dividends are~~] actually paid in  
2 cash or property other than a note payable within one year after the  
3 declaration date; or

4 (2) the date the distribution is [~~dividends are~~]  
5 actually paid in cash or property other than a note payable.

6 (g) All oil and gas exploration and production activities  
7 conducted by a taxable entity [~~corporation~~] that reports its  
8 surplus according to generally accepted accounting principles as  
9 required or permitted by this chapter must be reported according to  
10 the successful efforts or the full cost method of accounting.

11 (h) A parent or investor taxable entity [~~corporation~~] must  
12 use the cost method of accounting in reporting and calculating the  
13 franchise tax on its investments in subsidiary taxable entities  
14 [~~corporations~~] or other investees. The retained earnings of a  
15 subsidiary taxable entity [~~corporation~~] or other investee before  
16 acquisition by the parent or investor taxable entity [~~corporation~~]  
17 may not be excluded from the cost of the subsidiary taxable entity  
18 [~~corporation~~] or investee to the parent or investor taxable entity  
19 [~~corporation~~] and must be included by the parent or investor  
20 taxable entity [~~corporation~~] in calculating its surplus.

21 (j) A taxable entity [~~corporation~~] may not exclude from  
22 surplus:

23 (1) liabilities for compensation and other benefits  
24 provided to employees, other than wages, that are not debt as of the  
25 end of the accounting period on which the taxable capital component  
26 is based, including retirement, medical, insurance,  
27 postretirement, and other similar benefits; and

(2) deferred investment tax credits.

(k) Notwithstanding any other provision in this chapter, a taxable entity ~~[corporation]~~ subject to the tax imposed by this chapter shall use double entry bookkeeping to account for all transactions that affect the computation of that tax.

(m) A taxable entity ~~[corporation]~~ may not use the push-down method of accounting in computing or reporting its surplus.

~~[(n) A corporation must use the equity method of accounting when reporting an investment in a partnership or joint venture.]~~

SECTION 2.14. Section 171.110, Tax Code, is amended to read as follows:

Sec. 171.110. DETERMINATION OF NET TAXABLE EARNED SURPLUS.

(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.

(a-1) The comptroller shall adopt rules to determine the reportable federal taxable income of an entity other than a

corporation using principles similar to the standards applied to a corporation and a limited liability company.

(a-2) The taxable earned surplus of a partnership is the greater of:

(1) an amount computed by:

(A) determining the amount of the partnership's ordinary income or loss under applicable provisions of the Internal Revenue Code, and adding guaranteed payments to partners and capital gains that are additional items not already included in ordinary income or loss; and

(B) subtracting:

(i) the amount paid to the partners that is subject to self-employment taxes; and

(ii) the amount paid to a qualified pension plan or benefit plan for the partners; or

(2) 15 percent of the amount determined under Subdivision (1)(A).

(a-3) The taxable earned surplus of an entity other than a corporation or a partnership is the entity's reportable federal taxable income.

(a-4) The net taxable earned surplus of a taxable entity is computed by:

(1) determining the taxable entity's taxable earned surplus as provided by Subsection (a), (a-1), (a-2), or (a-3), as appropriate ~~[to determine the corporation's taxable earned surplus]~~;

(2) apportioning the taxable entity's ~~[corporation's]~~

1 taxable earned surplus to this state as provided by Section  
2 171.106(b) or (c), as applicable, to determine the taxable entity's  
3 ~~[corporation's]~~ apportioned taxable earned surplus;

4 (3) adding the taxable entity's ~~[corporation's]~~  
5 taxable earned surplus allocated to this state as provided by  
6 Section 171.1061; and

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

10 ~~[(b) Except as provided by Subsection (c), a corporation is~~  
11 ~~not required to add the compensation of officers or directors as~~  
12 ~~required by Subsection (a)(1) if the corporation is:~~

13 ~~[(1) a corporation that has not more than 35~~  
14 ~~shareholders; or~~

15 ~~[(2) an S corporation, as that term is defined by~~  
16 ~~Section 1361, Internal Revenue Code.~~

17 ~~[(c) A subsidiary corporation may not claim the exclusion~~  
18 ~~under Subsection (b) if it has a parent corporation that does not~~  
19 ~~qualify for the exclusion. For purposes of this subsection, a~~  
20 ~~corporation qualifies as a parent if it ultimately controls the~~  
21 ~~subsidiary, even if the control arises through a series or group of~~  
22 ~~other subsidiaries or entities. Control is presumed if a parent~~  
23 ~~corporation directly or indirectly owns, controls, or holds a~~  
24 ~~majority of the outstanding voting stock of a corporation or~~  
25 ~~ownership interests in another entity.]~~

26 (d) A corporation's reportable federal taxable income is  
27 the corporation's federal taxable income after Schedule C special



1 deductions and before net operating loss deductions as computed  
2 under the Internal Revenue Code, except that an S corporation's  
3 reportable federal taxable income is the amount of the income  
4 reportable to the Internal Revenue Service as taxable to the  
5 corporation's shareholders.

6 (e) For purposes of this section, a business loss is any  
7 negative amount after apportionment and allocation. The business  
8 loss shall be carried forward to the year succeeding the loss year  
9 as a deduction to net taxable earned surplus, then successively to  
10 the succeeding four taxable years after the loss year or until the  
11 loss is exhausted, whichever occurs first, but for not more than  
12 five taxable years after the loss year. Notwithstanding the  
13 preceding sentence, a business loss from a tax year that ends before  
14 January 1, 1991, may not be used to reduce net taxable earned  
15 surplus. A business loss can be carried forward only by the taxable  
16 entity [~~corporation~~] that incurred the loss and cannot be  
17 transferred to or claimed by any other entity, including the  
18 survivor of a merger if the loss was incurred by the taxable entity  
19 [~~corporation~~] that did not survive the merger.

20 (f) A taxable entity [~~corporation~~] may use either the "first  
21 in-first out" or "last in-first out" method of accounting to  
22 compute its net taxable earned surplus, but only to the extent that  
23 the taxable entity [~~corporation~~] used that method on its most  
24 recent federal income tax report originally due on or before the  
25 date on which the taxable entity's [~~corporation's~~] franchise tax  
26 report is originally due.

27 [~~(g) For purposes of this section, an approved Employee~~]

~~Stock Ownership Plan controlling a minority interest and voted through a single trustee shall be considered one shareholder.]~~

(h) A taxable entity ~~[corporation]~~ shall report its net taxable earned surplus based solely on its own financial condition. Consolidated reporting is prohibited.

~~[(i) For purposes of this section, any person designated as an officer is presumed to be an officer if that person:~~

~~[(1) holds an office created by the board of directors or under the corporate charter or bylaws; and~~

~~[(2) has legal authority to bind the corporation with third parties by executing contracts or other legal documents.~~

~~[(j) A corporation may rebut the presumption described in Subsection (i) that a person is an officer if it conclusively shows, through the person's job description or other documentation, that the person does not participate or have authority to participate in significant policy making aspects of the corporate operations.]~~

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

(l) In this section:

(1) "Federal obligations" means:

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

(B) direct obligations of a United States government-sponsored agency.

(2) "Obligation" means any bond, debenture, security,

1 mortgage-backed security, pass-through certificate, or other  
2 evidence of indebtedness of the issuing entity. The term does not  
3 include a deposit, a repurchase agreement, a loan, a lease, a  
4 participation in a loan or pool of loans, a loan collateralized by  
5 an obligation of a United States government agency, or a loan  
6 guaranteed by a United States government agency.

7 (3) "United States government" means any department or  
8 ministry of the federal government, including a federal reserve  
9 bank. The term does not include a state or local government, a  
10 commercial enterprise owned wholly or partly by the United States  
11 government, or a local governmental entity or commercial enterprise  
12 whose obligations are guaranteed by the United States government.

13 (4) "United States government agency" means an  
14 instrumentality of the United States government whose obligations  
15 are fully and explicitly guaranteed as to the timely payment of  
16 principal and interest by the full faith and credit of the United  
17 States government. The term includes the Government National  
18 Mortgage Association, the Department of Veterans Affairs, the  
19 Federal Housing Administration, the Farmers Home Administration,  
20 the Export-Import Bank, the Overseas Private Investment  
21 Corporation, the Commodity Credit Corporation, the Small Business  
22 Administration, and any successor agency.

23 (5) "United States government-sponsored agency" means  
24 an agency originally established or chartered by the United States  
25 government to serve public purposes specified by the United States  
26 Congress but whose obligations are not explicitly guaranteed by the  
27 full faith and credit of the United States government. The term

1 includes the Federal Home Loan Mortgage Corporation, the Federal  
2 National Mortgage Association, the Farm Credit System, the Federal  
3 Home Loan Bank System, the Student Loan Marketing Association, and  
4 any successor agency.

5 (m) Except as provided by Subsection (n), in determining net  
6 taxable earned surplus, a taxable entity shall add back to  
7 reportable federal taxable income any royalty payment, interest  
8 payment, or management fee payment made to a related entity during  
9 the period on which earned surplus is based to the extent deducted  
10 in computing reportable federal taxable income.

11 (n)(1) A taxable entity is not required to add back royalty  
12 payments made to a related entity if:

13 (A) the related entity during the period on which  
14 earned surplus is based directly or indirectly paid or incurred the  
15 amount to a person or entity that is not a related party, the  
16 transaction was done for a valid business purpose, and the payments  
17 were made at arm's length; or

18 (B) the royalty payments are paid or incurred to  
19 a related party organized under the laws of a foreign nation, are  
20 subject to a comprehensive income tax treaty between the foreign  
21 nation and the United States, and are taxed in the foreign nation at  
22 a tax rate equal to or greater than 4.5 percent.

23 (2) A taxable entity is not required to add back  
24 interest payments made to a related entity if:

25 (A) the rate of interest used to calculate  
26 interest payments does not exceed the interest rate provided by  
27 Section 111.060(b) that was in effect at the time the loan agreement

1 was made; or

2 (B) the related entity during the period on which  
3 earned surplus is based directly or indirectly paid or incurred the  
4 amount to a person or entity that is not a related entity, the  
5 transaction was done for a valid business purpose, and the payments  
6 were made at arm's length.

7 (3) A taxable entity is not required to add back  
8 management fee payments made to a related entity if the taxable  
9 entity established by a preponderance of the evidence that the  
10 payment between the taxable entity and a related entity had a valid  
11 business purpose and the payments were made at arm's length.

12 (o) For purposes of Subsections (m) and (n), the following  
13 terms have the following meanings:

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

18 (2) "Controlling interest" means:

19 (A) for a corporation, either 50 percent or more,  
20 owned directly or indirectly, of the total combined voting power of  
21 all classes of stock of the corporation, or 50 percent or more,  
22 owned directly or indirectly, of the beneficial ownership interest  
23 in the voting stock of the corporation; and

24 (B) for a partnership, association, trust, or  
25 other entity, 50 percent or more, owned directly or indirectly, of  
26 the capital, profits, or beneficial interest in the partnership,  
27 association, trust, or other entity.

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

3           (4) "Management fee" includes expenses and costs paid  
4 for services pertaining to accounts receivable and payable,  
5 employee benefit plans, insurance, legal, consulting, payroll,  
6 data processing, purchasing, tax, financial and securities,  
7 accounting, reporting and compliance services, or similar  
8 services.

9           (5) "Related entity" means a person, corporation, or  
10 other entity, including an entity that is treated as a pass-through  
11 or disregarded entity for purposes of federal taxation, whether the  
12 person, corporation, or entity is a taxable entity or not, in which  
13 one person, corporation, or entity, or set of related persons,  
14 corporations, or entities, directly or indirectly owns or controls  
15 a controlling interest in another entity.

16           (6) "Royalty payment" means a payment related to the  
17 acquisition, use, maintenance or management, ownership, sale,  
18 exchange, or any other disposition of licenses, trademarks,  
19 copyrights, trade names, trade dress, service marks, mask works,  
20 trade secrets, patents, or any other similar types of intangible  
21 assets as determined by the comptroller.

22           (7) "Valid business purpose" means one or more  
23 business purposes, other than the avoidance or reduction of taxes,  
24 that alone or in combination constitute the primary motivation for  
25 a business activity or transaction that changes in a meaningful  
26 way, apart from tax effects, the economic position of the entity. A  
27 meaningful change in the taxable entity's economic position

1 includes an increase in its market share or entry into new business  
2 markets.

3 (p) Notwithstanding any other provision of this section, a  
4 taxable entity shall add back to reportable federal taxable income  
5 any payments made to a related party that is an entity described in  
6 Section 171.001(b)(9-b)(G) during the period on which earned  
7 surplus is based to the extent deducted in computing reportable  
8 federal taxable income.

9 (q) The comptroller may distribute, apportion, or allocate  
10 gross income, deductions, credits, or allowances between or among  
11 two or more organizations, trades, or businesses, whether or not  
12 incorporated, whether or not organized in the United States, and  
13 whether or not affiliated, if:

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

16 (2) the comptroller determines that the distribution,  
17 apportionment, or allocation is necessary to reflect an  
18 arm's-length standard, within the meaning of 26 C.F.R. Section  
19 1.482-1, and to clearly reflect the income of those organizations,  
20 trades, or businesses.

21 (r) In administering Subsection (q), the comptroller shall  
22 apply the administrative and judicial interpretations of Section  
23 482, Internal Revenue Code.

24 SECTION 2.15. Sections 171.112(b)-(f) and (h), Tax Code,  
25 are amended to read as follows:

26 (b) Except as otherwise provided in this section, a taxable  
27 entity [~~corporation~~] must compute gross receipts in accordance with

1 generally accepted accounting principles. If generally accepted  
2 accounting principles are unsettled or do not specify an accounting  
3 practice for a particular purpose related to the computation of  
4 gross receipts, the comptroller by rule may establish rules to  
5 specify the applicable accounting practice.

6 (c) A taxable entity [~~corporation~~] whose taxable capital is  
7 less than \$1 million may report its gross receipts according to the  
8 method used in the taxable entity's [~~corporation's~~] most recent  
9 federal income tax return originally due on or before the date on  
10 which the taxable entity's [~~corporation's~~] franchise tax report is  
11 originally due. In determining if taxable capital is less than \$1  
12 million, the taxable entity [~~corporation~~] shall apply the methods  
13 the taxable entity [~~corporation~~] used in computing that federal  
14 income tax return unless another method is required under this  
15 chapter.

16 (d) A taxable entity [~~corporation~~] shall report its gross  
17 receipts based solely on its own financial condition. Consolidated  
18 reporting is prohibited.

19 (e) Unless the provisions of Section 171.111 apply due to an  
20 election under that section, a taxable entity [~~corporation~~] may not  
21 change its accounting methods used to calculate gross receipts more  
22 often than once every four years without the express written  
23 consent of the comptroller. A change in accounting methods is not  
24 justified solely because it results in a reduction of tax  
25 liability.

26 (f) Notwithstanding any other provision in this chapter, a  
27 taxable entity [~~corporation~~] subject to the tax imposed by this



chapter shall use double entry bookkeeping to account for all transactions that affect the computation of that tax.

(h) Except as otherwise provided by this section, a taxable entity [~~corporation~~] shall use the same accounting methods to apportion its taxable capital as it used to compute its taxable capital.

SECTION 2.16. Sections 171.1121(a)-(d), Tax Code, are amended to read as follows:

(a) For purposes of this section, "gross receipts" means all revenues reportable by a taxable entity [~~corporation~~] on its federal tax return, without deduction for the cost of property sold, materials used, labor performed, or other costs incurred, unless otherwise specifically provided in this chapter. "Gross receipts" does not include revenues that are not included in taxable earned surplus. For example, Schedule C special deductions and any amounts subtracted from reportable federal taxable income under Section 171.110(a) [~~171.110(a)(1)~~] are not included in taxable earned surplus and therefore are not considered gross receipts.

(b) Except as otherwise provided by this section, a taxable entity [~~corporation~~] shall use the same accounting methods to apportion taxable earned surplus as used in computing reportable federal taxable income.

(c) A taxable entity [~~corporation~~] shall report its gross receipts based solely on its own financial condition. Consolidated reporting is prohibited.

(d) Unless the provisions of Section 171.111 apply due to an

1 election under that section, a taxable entity [~~corporation~~] may not  
2 change its accounting methods used to calculate gross receipts more  
3 often than once every four years without the express written  
4 consent of the comptroller. A change in accounting methods is not  
5 justified solely because it results in a reduction of tax  
6 liability.

7 SECTION 2.17. Section 171.113, Tax Code, is amended to read  
8 as follows:

9 Sec. 171.113. ALTERNATE METHOD OF DETERMINING TAXABLE  
10 CAPITAL AND GROSS RECEIPTS FOR CERTAIN TAXABLE ENTITIES  
11 [~~CORPORATIONS~~]. (a) This section applies only to:

12 (1) a corporation organized as a close corporation  
13 under Part 12, Texas Business Corporation Act, that has not more  
14 than 35 shareholders;

15 (2) a foreign corporation organized under the close  
16 corporation law of another state that has not more than 35  
17 shareholders; [~~and~~]

18 (3) an S corporation as that term is defined by Section  
19 1361, Internal Revenue Code of 1986 (26 U.S.C. Section 1361); and

20 (4) a taxable entity other than a corporation that has  
21 35 or fewer owners.

22 (b) A taxable entity [~~corporation~~] to which this section  
23 applies may elect to compute its surplus, assets, debts, and gross  
24 receipts according to the method the taxable entity [~~corporation~~]  
25 uses to report its federal income tax instead of as provided by  
26 Sections 171.109(b) and (g) and Section 171.112(b). This section  
27 does not affect the application of the other subsections of

Sections 171.109 and 171.112 and other provisions of this chapter to a taxable entity [~~corporation~~] making the election.

(c) The comptroller may adopt rules as necessary to specify the reporting requirements for taxable entities [~~corporations~~] to which this section applies.

(d) This section does not apply to a subsidiary of a taxable entity [~~corporation~~] unless it applies to the parent [~~corporation~~] of the subsidiary.

(e) The election under Subsection (b) becomes effective when written notice of the election is received by the comptroller from the taxable entity [~~corporation~~]. An election under Subsection (b) must be postmarked not later than the due date for the electing taxable entity's [~~corporation's~~] franchise tax report to which the election applies.

SECTION 2.18. Chapter 171, Tax Code, is amended by adding Subchapter C-1 to read as follows:

SUBCHAPTER C-1. TAXABLE WAGES

Sec. 171.131. TAXABLE WAGES. (a) In this section:

(1) "Employee" means an employee described by Section 171.133 or 171.134.

(2) "Wages" means:

(A) wages as defined under Subchapter F, Chapter 201, Labor Code, paid by a taxable entity and includes the amounts excluded by Sections 201.082(1) and (9), Labor Code; and

(B) wages, to the extent not covered by Paragraph (A), described under Section 171.132.

(b) The taxable wages of a taxable entity are the total

1 amount of wages paid by the entity to all of the entity's employees  
2 during the reporting period as provided by Section 171.1533.

3 Sec. 171.132. LOCATION OF SERVICE. (a) Wages include wages  
4 for a service performed in this state or in and outside this state  
5 if:

6 (1) the service is localized in this state; or

7 (2) the service is not localized in any state and some  
8 of the service is performed in this state and:

9 (A) the base of operations is in this state, or  
10 there is no base of operations but the service is directed or  
11 controlled from this state; or

12 (B) the base of operations or place from which  
13 the service is directed or controlled is not in a state in which a  
14 part of the service is performed, and the residence of the person  
15 who performs the service is in this state.

16 (b) Wages include wages for a service performed anywhere in  
17 the United States, including service performed entirely outside  
18 this state, if:

19 (1) the service is not localized in a state;

20 (2) the service is performed by an individual who is  
21 one of a class of employees who are required to travel outside this  
22 state in performance of their duties; and

23 (3) the individual's base of operations is in this  
24 state or, if there is no base of operations, the individual's  
25 service is directed or controlled from this state.

26 (c) Wages include wages for a service performed outside the  
27 United States by a citizen of the United States.

1        (d) For the purposes of this section, service is localized  
2 in a state if the service is performed entirely within the state or  
3 the service performed outside the state is incidental to the  
4 service performed in the state. In this section, a service that is  
5 "incidental" includes a service that is temporary or that consists  
6 of isolated transactions.

7        Sec. 171.133. FULL-TIME AND PART-TIME EMPLOYEES. (a) In  
8 this section, "contribution" has the meaning assigned that term by  
9 Section 201.011, Labor Code.

10       (b) An individual is an employee if the taxable entity pays  
11 or is required to pay a contribution for a reporting period without  
12 regard to whether:

13               (1) the individual is a full-time or part-time  
14 employee; or

15               (2) the wages paid were for the entire reporting  
16 period or a portion of the reporting period.

17       Sec. 171.134. DETERMINATION OF WHETHER CERTAIN INDIVIDUALS  
18 ARE EMPLOYEES. An individual is an employee of a taxable entity as  
19 provided by this section, without regard to whether the taxable  
20 entity pays a contribution for the individual, if the individual  
21 provides services in this state to the taxable entity for  
22 compensation and the taxable entity has a right to direct and  
23 control how the individual performs the services for which the  
24 individual is provided compensation, indicated by factors that  
25 include:

26               (1) whether the individual is subject to the taxable  
27 entity's instructions about when, where, and how to work;

1           (2) whether the individual is trained to perform  
2 services in a particular manner;

3           (3) the extent to which the individual has  
4 unreimbursed business expenses;

5           (4) the extent to which the individual has a  
6 significant investment in the facilities the individual uses in  
7 performing the services;

8           (5) the extent to which the individual makes the  
9 individual's services available to the relevant market by  
10 advertising, by maintaining a visible business location, or  
11 otherwise;

12           (6) the extent to which the individual can realize a  
13 profit or loss;

14           (7) the manner in which the individual is paid by the  
15 taxable entity;

16           (8) whether a written contract between the individual  
17 and the taxable entity provides that the individual is or is not an  
18 employee;

19           (9) whether the taxable entity provides the individual  
20 with employee-type benefits, including insurance, a pension plan,  
21 vacation pay, or sick pay;

22           (10) whether the relationship between the individual  
23 and the taxable entity is considered permanent or for a limited  
24 period; and

25           (11) the extent to which services performed by the  
26 individual are a key aspect of the affairs of the taxable entity.

27           SECTION 2.19. Section 171.151, Tax Code, is amended to read

as follows:

Sec. 171.151. PRIVILEGE PERIOD COVERED BY TAX. The franchise tax shall be paid for each of the following:

(1) an initial period beginning on the taxable entity's [~~corporation's~~] beginning date and ending on the day before the first anniversary of the beginning date;

(2) a second period beginning on the first anniversary of the beginning date and ending on December 31 following that date; and

(3) after the initial and second periods have expired, a regular annual period beginning each year on January 1 and ending the following December 31.

SECTION 2.20. Section 171.152(c), Tax Code, is amended to read as follows:

(c) Payment of the tax covering the regular annual period is due May 15, of each year after the beginning of the regular annual period. However, if the first anniversary of the taxable entity's [~~corporation's~~] beginning date is after October 3 and before January 1, the payment of the tax covering the first regular annual period is due on the same date as the tax covering the initial period.

SECTION 2.21. Sections 171.153(a) and (c), Tax Code, are amended to read as follows:

(a) The tax covering the initial period is reported on the initial report and is based on the business done by the taxable entity [~~corporation~~] during the period beginning on the taxable entity's [~~corporation's~~] beginning date and:

1           (1) ending on the last accounting period ending date  
2 that is at least six months after the beginning date and at least 60  
3 days before the original due date of the initial report; or

4           (2) if there is no such period ending date in  
5 Subdivision (1) ~~[of this subsection]~~, then ending on the day that is  
6 the last day of a calendar month and that is nearest to the end of  
7 the taxable entity's ~~[corporation's]~~ first year of business; or

8           (3) ending on the day after the merger occurs, for the  
9 survivor of a merger which occurs after the day on which the tax is  
10 based in Subdivision (1) or ~~[Subdivision]~~ (2), whichever is  
11 applicable, ~~[of Subsection (a)]~~ and before January 1, of the year an  
12 initial report is due by the survivor.

13           (c) The tax covering the regular annual period is based on  
14 the business done by the taxable entity ~~[corporation]~~ during its  
15 last accounting period that ends in the year before the year in  
16 which the tax is due; unless a taxable entity ~~[corporation]~~ is the  
17 survivor of a merger which occurs between the end of its last  
18 accounting period in the year before the report year and January 1  
19 of the report year, in which case the tax will be based on the  
20 financial condition of the surviving taxable entity ~~[corporation]~~  
21 for the 12-month period ending on the day after the merger.  
22 However, if the first anniversary of the taxable entity's  
23 ~~[corporation's]~~ beginning date is after October 3 and before  
24 January 1, the tax covering the first regular annual period is based  
25 on the same business on which the tax covering the initial period is  
26 based and is reported on the initial report.

27           SECTION 2.22. Section 171.1532, Tax Code, is amended to



read as follows:

Sec. 171.1532. BUSINESS ON WHICH TAX ON NET TAXABLE EARNED SURPLUS IS BASED. (a) The tax covering the privilege periods included on the initial report, as required by Section 171.153, is based on the business done by the taxable entity ~~[corporation]~~ during the period beginning on the taxable entity's ~~[corporation's]~~ beginning date and:

(1) ending on the last accounting period ending date that is at least 60 days before the original due date of the initial report; or

(2) if there is no such period ending date in Subdivision (1) ~~[of this subsection]~~, then ending on the day that is the last day of a calendar month and that is nearest to the end of the taxable entity's ~~[corporation's]~~ first year of business.

(b) The tax covering the regular annual period, other than a regular annual period included on the initial report, is based on the business done by the taxable entity ~~[corporation]~~ during the period beginning with the day after the last date upon which net taxable earned surplus on a previous report was based and ending with its last accounting period ending date for federal income tax purposes in the year before the year in which the report is originally due.

SECTION 2.23. Subchapter D, Chapter 171, Tax Code, is amended by adding Section 171.1533 to read as follows:

Sec. 171.1533. WAGES ON WHICH TAX ON TAXABLE WAGES IS BASED.  
(a) The tax covering the privilege periods included on the initial report, as required by Section 171.153, is based on the taxable

1 wages paid by the taxable entity during the period beginning on the  
2 taxable entity's beginning date and:

3 (1) ending on the last accounting period ending date  
4 that is at least 60 days before the original due date of the initial  
5 report; or

6 (2) if there is no such period ending date in  
7 Subdivision (1), then ending on the day that is the last day of a  
8 calendar month and that is nearest to the end of the taxable  
9 entity's first year of business.

10 (b) The tax covering the regular annual period, other than a  
11 regular annual period included on the initial report, is based on  
12 the taxable wages paid by the taxable entity during the period  
13 beginning with the day after the last date on which taxable wages on  
14 a previous report was based and ending with its last accounting  
15 period ending date for federal income tax purposes in the year  
16 before the year in which the report is originally due.

17 SECTION 2.24. Section 171.154, Tax Code, is amended to read  
18 as follows:

19 Sec. 171.154. PAYMENT TO COMPTROLLER. A taxable entity  
20 ~~[corporation]~~ on which a tax is imposed by this chapter shall pay  
21 the tax to the comptroller.

22 SECTION 2.25. Section 171.201, Tax Code, is amended to read  
23 as follows:

24 Sec. 171.201. INITIAL REPORT. (a) Except as provided by  
25 Section 171.2022, a taxable entity ~~[corporation]~~ on which the  
26 franchise tax is imposed shall file an initial report with the  
27 comptroller containing:

1           (1) information showing the financial condition of the  
2 taxable entity [~~corporation~~] on the day that is the last day of a  
3 calendar month and that is nearest to the end of the taxable  
4 entity's [~~corporation's~~] first year of business;

5           (2) the name and address of:

6                 (A) each officer, [~~and~~] director, and manager of  
7 the taxable entity [~~corporation~~];

8                 (B) for a limited partnership, each general  
9 partner;

10                (C) for a limited liability partnership, each  
11 managing partner or, if there is not a managing partner, each  
12 partner; or

13                (D) for a trust, each trustee;

14           (3) the name and address of the agent of the taxable  
15 entity [~~corporation~~] designated under Section 171.354; [~~and~~]

16           (4) a statement declaring the entity's election of  
17 rate required under Section 171.0011 or 171.0012, as applicable;  
18 and

19           (5) other information required by the comptroller.

20           (b) The taxable entity [~~corporation~~] shall file the report  
21 on or before the date the payment is due under Subsection (a) of  
22 Section 171.152.

23           SECTION 2.26. Sections 171.202(a)-(f) and (i), Tax Code,  
24 are amended to read as follows:

25           (a) Except as provided by Section 171.2022, a taxable entity  
26 [~~corporation~~] on which the franchise tax is imposed shall file an  
27 annual report with the comptroller containing:

1           (1) financial and other information of the taxable  
2 entity [~~corporation~~] necessary to compute the tax under this  
3 chapter on both the rate provided by Section 171.002 and the  
4 alternate rate provided by Section 171.003;

5           (2) the name and address of each officer and director  
6 of the taxable entity [~~corporation~~];

7           (3) the name and address of the agent of the taxable  
8 entity [~~corporation~~] designated under Section 171.354; [~~and~~]

9           (4) if applicable, a statement declaring that the  
10 election period provided by Section 171.0011(b) has expired and the  
11 entity's election of rate under Section 171.0011 or 171.0012, as  
12 applicable, for the next election period; and

13           (5) other information required by the comptroller.

14           (b) The taxable entity [~~corporation~~] shall file the report  
15 before May 16 of each year after the beginning of the regular annual  
16 period. The report shall be filed on forms supplied by the  
17 comptroller.

18           (c) The comptroller shall grant an extension of time to a  
19 taxable entity [~~corporation~~] that is not required by rule to make  
20 its tax payments by electronic funds transfer for the filing of a  
21 report required by this section to any date on or before the next  
22 November 15, if a taxable entity [~~corporation~~]:

23           (1) requests the extension, on or before May 15, on a  
24 form provided by the comptroller; and

25           (2) remits with the request:

26                   (A) not less than 90 percent of the amount of tax  
27 reported as due on the report filed on or before November 15; or

1 (B) 100 percent of the tax reported as due for the  
2 previous calendar year on the report due in the previous calendar  
3 year and filed on or before May 14.

4 (d) In the case of a taxpayer whose previous return was its  
5 initial report, the optional payment provided under Subsection  
6 (c)(2)(B) or (e)(2)(B) must be equal to the greater of:

7 (1) an amount produced by multiplying the net taxable  
8 capital, as reported on the initial report filed on or before May  
9 14, by the rate of tax in Section 171.002(a)(1) that is effective  
10 January 1 of the year in which the report is due; ~~[or]~~

11 (2) an amount produced by multiplying the net taxable  
12 earned surplus, as reported on the initial report filed on or before  
13 May 14, by the rate of tax in Section 171.002(a)(2) that is  
14 effective January 1 of the year in which the report is due; or

15 (3) an amount produced by multiplying taxable wages,  
16 as reported on the initial report filed on or before May 14, by the  
17 rate of tax in Section 171.003 that is effective January 1 of the  
18 year in which the report is due.

19 (e) The comptroller shall grant an extension of time for the  
20 filing of a report required by this section by a taxable entity  
21 ~~[corporation]~~ required by rule to make its tax payments by  
22 electronic funds transfer to any date on or before the next August  
23 15, if the taxable entity ~~[corporation]~~:

24 (1) requests the extension, on or before May 15, on a  
25 form provided by the comptroller; and

26 (2) remits with the request:

27 (A) not less than 90 percent of the amount of tax

1 reported as due on the report filed on or before August 15; or

2 (B) 100 percent of the tax reported as due for the  
3 previous calendar year on the report due in the previous calendar  
4 year and filed on or before May 14.

5 (f) The comptroller shall grant an extension of time to a  
6 taxable entity [~~corporation~~] required by rule to make its tax  
7 payments by electronic funds transfer for the filing of a report due  
8 on or before August 15 to any date on or before the next November 15,  
9 if the taxable entity [~~corporation~~]:

10 (1) requests the extension, on or before August 15, on  
11 a form provided by the comptroller; and

12 (2) remits with the request the difference between the  
13 amount remitted under Subsection (e) and 100 percent of the amount  
14 of tax reported as due on the report filed on or before November 15.

15 (i) If a taxable entity [~~corporation~~] requesting an  
16 extension under Subsection (c) or (e) does not file the report due  
17 in the previous calendar year on or before May 14, the taxable  
18 entity [~~corporation~~] may not receive an extension under Subsection  
19 (c) or (e) unless the taxable entity [~~corporation~~] complies with  
20 Subsection (c)(2)(A) or (e)(2)(A), as appropriate.

21 SECTION 2.27. Section 171.2022, Tax Code, is amended to  
22 read as follows:

23 Sec. 171.2022. EXEMPTION FROM REPORTING REQUIREMENTS. A  
24 taxable entity [~~corporation~~] that does not owe any tax under this  
25 chapter for any period is not required to file a report under  
26 Section 171.201 or [7] 171.202 [~~or 171.2021~~]. The exemption  
27 applies only to a period for which no tax is due.

SECTION 2.28. Section 171.204, Tax Code, is amended to read as follows:

Sec. 171.204. INFORMATION REPORT. (a) Except as provided by Subsection (b), to determine eligibility for the exemption provided by Section 171.2022, or to determine the amount of the franchise tax or the correctness of a franchise tax report, the comptroller may require ~~[an officer of]~~ a taxable entity ~~[corporation]~~ that may be subject to the tax imposed under this chapter to file an information report with the comptroller stating the amount of the taxable entity's ~~[corporation's]~~ taxable capital, ~~[and]~~ earned surplus, wages paid, or any other information the comptroller may request.

(b) The comptroller may require a taxable entity ~~[an officer of a corporation]~~ that does not owe any tax because of the application of Section 171.004(2) ~~[171.002(d)(2)]~~ to file an abbreviated information report with the comptroller stating the amount of the taxable entity's ~~[corporation's]~~ gross receipts from its entire business. The comptroller may not require a taxable entity ~~[corporation]~~ described by this subsection to file an information report that requires the taxable entity ~~[corporation]~~ to report or compute its earned surplus, ~~[or]~~ taxable capital, or wages paid.

SECTION 2.29. Section 171.205, Tax Code, is amended to read as follows:

Sec. 171.205. ADDITIONAL INFORMATION REQUIRED BY COMPTROLLER. The comptroller may require a taxable entity ~~[corporation]~~ on which the franchise tax is imposed to furnish to

1 the comptroller information from the taxable entity's  
2 [~~corporation's~~] books and records that has not been filed  
3 previously and that is necessary for the comptroller to determine  
4 the amount of the tax.

5 SECTION 2.30. Section 171.206, Tax Code, is amended to read  
6 as follows:

7 Sec. 171.206. CONFIDENTIAL INFORMATION. Except as provided  
8 by Section 171.207 [~~of this code~~], the following information is  
9 confidential and may not be made open to public inspection:

10 (1) information that is obtained from a record or  
11 other instrument that is required by this chapter to be filed with  
12 the comptroller; or

13 (2) information, including information about the  
14 business affairs, operations, profits, losses, or expenditures of a  
15 taxable entity [~~corporation~~], obtained by an examination of the  
16 books and records, officers, partners, trustees, agents, or  
17 employees of a taxable entity [~~corporation~~] on which a tax is  
18 imposed by this chapter.

19 SECTION 2.31. Section 171.208, Tax Code, is amended to read  
20 as follows:

21 Sec. 171.208. PROHIBITION OF DISCLOSURE OF INFORMATION. A  
22 person, including a state officer or employee or an owner [~~a~~  
23 ~~shareholder~~] of a taxable entity [~~corporation~~], who has access to a  
24 report filed under this chapter may not make known in a manner not  
25 permitted by law the amount or source of the taxable entity's  
26 [~~corporation's~~] income, profits, losses, expenditures, or other  
27 information in the report relating to the financial condition of



1 the taxable entity [~~corporation~~].

2 SECTION 2.32. Section 171.209, Tax Code, is amended to read  
3 as follows:

4 Sec. 171.209. RIGHT OF OWNER [~~SHAREHOLDER~~] TO EXAMINE OR  
5 RECEIVE REPORTS. If an owner [~~a person owning at least one share of~~  
6 ~~outstanding stock~~] of a taxable entity [~~corporation~~] on whom the  
7 franchise tax is imposed presents evidence of the ownership to the  
8 comptroller, the person is entitled to examine or receive a copy of  
9 an initial or annual report that is filed under Section 171.201 or  
10 171.202 [~~of this code~~] and that relates to the taxable entity  
11 [~~corporation~~].

12 SECTION 2.33. Section 171.211, Tax Code, is amended to read  
13 as follows:

14 Sec. 171.211. EXAMINATION OF [~~CORPORATE~~] RECORDS. To  
15 determine the franchise tax liability of a taxable entity  
16 [~~corporation~~], the comptroller may investigate or examine the  
17 records of the taxable entity [~~corporation~~].

18 SECTION 2.34. Subchapter E, Chapter 171, Tax Code, is  
19 amended by adding Section 171.213 to read as follows:

20 Sec. 171.213. ACCESS TO TEXAS WORKFORCE COMMISSION REPORTS.  
21 The comptroller shall have full access to reports filed by a taxable  
22 entity on wages paid with the Texas Workforce Commission.

23 SECTION 2.35. The heading to Subchapter F, Chapter 171, Tax  
24 Code, is amended to read as follows:

25 SUBCHAPTER F. FORFEITURE OF CORPORATE AND BUSINESS PRIVILEGES

26 SECTION 2.36. Subchapter F, Chapter 171, Tax Code, is  
27 amended by adding Section 171.2515 to read as follows:

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

7       (b) The provisions of this subchapter, including Section  
8 171.255, that apply to the forfeiture of corporate privileges apply  
9 to the forfeiture of a partnership's right to transact business in  
10 this state.

11       SECTION 2.37. Section 171.351, Tax Code, is amended to read  
12 as follows:

13       Sec. 171.351. VENUE OF SUIT TO ENFORCE CHAPTER. Venue of a  
14 civil suit against a taxable entity [~~corporation~~] to enforce this  
15 chapter is either in a county where the taxable entity's  
16 [~~corporation's~~] principal office is located according to its  
17 charter or certificate of authority or in Travis County.

18       SECTION 2.38. Section 171.353, Tax Code, is amended to read  
19 as follows:

20       Sec. 171.353. APPOINTMENT OF RECEIVER. If a court forfeits  
21 a taxable entity's [~~corporation's~~] charter or certificate of  
22 authority, the court may appoint a receiver for the taxable entity  
23 [~~corporation~~] and may administer the receivership under the laws  
24 relating to receiverships.

25       SECTION 2.39. Section 171.354, Tax Code, is amended to read  
26 as follows:

27       Sec. 171.354. AGENT FOR SERVICE OF PROCESS. Each taxable

entity ~~[corporation]~~ on which a tax is imposed by this chapter shall designate a resident of this state as the taxable entity's ~~[corporation's]~~ agent for the service of process.

SECTION 2.40. Sections 171.362(a), (d), and (e), Tax Code, are amended to read as follows:

(a) If a taxable entity ~~[corporation]~~ on which a tax is imposed by this chapter fails to pay the tax when it is due and payable or fails to file a report required by this chapter when it is due, the taxable entity ~~[corporation]~~ is liable for a penalty of five percent of the amount of the tax due.

(d) If a taxable entity ~~[corporation]~~ electing to remit under ~~[Paragraph (A) of Subdivision (2) of Subsection (c) of]~~ Section 171.202(c)(2)(A) ~~[171.202 of this code]~~ remits less than the amount required, the penalties imposed by this section and the interest imposed under Section 111.060 ~~[of this code]~~ are assessed against the difference between the amount required to be remitted under ~~[Paragraph (A) of Subdivision (2) of Subsection (c) of]~~ Section 171.202(c)(2)(A) ~~[171.202]~~ and the amount actually remitted on or before May 15.

(e) If a taxable entity ~~[corporation]~~ remits the entire amount required by ~~[Subsection (c) of]~~ Section 171.202(c) ~~[171.202 of this code]~~, no penalties will be imposed against the amount remitted on or before November 15.

SECTION 2.41. Sections 171.363(a) and (b), Tax Code, are amended to read as follows:

(a) A taxable entity ~~[corporation]~~ commits an offense if the taxable entity ~~[corporation]~~ is subject to the provisions of this

chapter and the taxable entity [~~corporation~~] wilfully:

(1) fails to file a report;

(2) fails to keep books and records as required by this chapter;

(3) files a fraudulent report;

(4) violates any rule of the comptroller for the administration and enforcement of the provisions of this chapter; or

(5) attempts in any other manner to evade or defeat any tax imposed by this chapter or the payment of the tax.

(b) A person commits an offense if the person is an accountant or an agent for or an officer or employee of a taxable entity [~~corporation~~] and the person knowingly enters or provides false information on any report, return, or other document filed by the taxable entity [~~corporation~~] under this chapter.

SECTION 2.42. Subchapter H, Chapter 171, Tax Code, is amended by adding Sections 171.364-171.366 to read as follows:

Sec. 171.364. TAX NOT DEDUCTED FROM WAGES. A taxable entity may not deduct the tax imposed under this chapter from any wages of the taxable entity's employees.

Sec. 171.365. CRIMINAL PENALTY. (a) A person who violates Section 171.364 commits an offense.

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

Sec. 171.366. CIVIL PENALTY. (a) A person who violates Section 171.364 is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty

1 assessment.

2 (b) On request of the comptroller, the attorney general  
3 shall file suit to collect a penalty under this section.

4 SECTION 2.43. Section 171.401, Tax Code, is amended to read  
5 as follows:

6 Sec. 171.401. REVENUE DEPOSITED IN GENERAL REVENUE FUND.  
7 The revenue from the tax imposed by this chapter [~~on corporations~~]  
8 shall be deposited to the credit of the general revenue fund.

9 SECTION 2.44. Chapter 171, Tax Code, is amended by adding  
10 Subchapter I-1 to read as follows:

11 SUBCHAPTER I-1. APPLICATION OF REFUNDS AND CREDITS TO NONCORPORATE

12 TAXABLE ENTITIES

13 Sec. 171.451. APPLICATION OF REFUNDS AND CREDITS TO  
14 NONCORPORATE TAXABLE ENTITIES. Except as provided by Section  
15 171.452, a taxable entity that is not a corporation but that,  
16 because of its activities, would qualify for a specific refund or  
17 credit under this chapter if it were a corporation qualifies for the  
18 refund or credit in the same manner and under the same conditions as  
19 a corporation.

20 Sec. 171.452. TAXABLE ENTITIES ELECTING ALTERNATE RATE NOT  
21 ELIGIBLE FOR CREDITS. Notwithstanding any other provision of this  
22 chapter, a taxable entity that elects to pay the tax under this  
23 chapter at the alternate rate provided by Section 171.003 is not  
24 entitled to a credit under Subchapters J-U.

25 SECTION 2.45. Chapter 171, Tax Code, is amended by adding  
26 Subchapter X to read as follows:

SUBCHAPTER X. TAX CREDIT FOR CERTAIN PROVIDERS OF HEALTH CARE

SERVICES

Sec. 171.941. DEFINITIONS. In this subchapter:

(1) "Health care institution" means:

(A) an ambulatory surgical center;

(B) an assisted living facility licensed under Chapter 247, Health and Safety Code;

(C) an emergency medical services provider;

(D) a home and community support services agency;

(E) a hospice;

(F) a hospital;

(G) a hospital system;

(H) an intermediate care facility for the mentally retarded or a home and community-based services waiver program for persons with mental retardation adopted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n);

(I) a nursing home; or

(J) an end stage renal disease facility licensed under Section 251.011, Health and Safety Code.

(2) "Provider" means a taxable entity that participates in the Medicaid program, the Medicare program, or the Children's Health Insurance Program (CHIP) as a provider of health care services.

Sec. 171.942. QUALIFICATION. (a) A provider that is a health care institution is entitled to a credit in the amount provided by Section 171.943(a) against the taxes imposed under this

1 chapter for the period on which earned surplus is based if, for that  
2 period, the provider received not less than 15 percent of the  
3 provider's revenue from payments received under the Medicaid  
4 program, the Medicare program, or the Children's Health Insurance  
5 Program (CHIP).

6 (b) A provider that is not a health care institution is  
7 entitled to a credit in the amount provided by Section 171.943(b)  
8 against the taxes imposed under this chapter for the period on which  
9 earned surplus is based if, for that period, the provider  
10 participated in the Medicaid program, the Medicare program, or the  
11 Children's Health Insurance Program (CHIP).

12 Sec. 171.943. AMOUNT OF CREDIT. (a) The amount of credit  
13 for a provider that is a health care institution is equal to an  
14 amount computed by:

15 (1) determining a fraction:

16 (A) the numerator of which is the total amount of  
17 payments the provider received under the Medicaid program, the  
18 Medicare program, or the Children's Health Insurance Program  
19 (CHIP), for the period on which earned surplus is based; and

20 (B) the denominator of which is the gross  
21 receipts of the provider from business done in this state as  
22 determined under Section 171.1032 for the period on which earned  
23 surplus is based; and

24 (2) multiplying the fraction determined under  
25 Subdivision (1) by the tax liability of the provider under this  
26 chapter for the period on which earned surplus is based.

27 (b) The amount of credit for a provider that is not a health

1 care institution is equal to 20 percent of the total amount of  
2 payments the provider received from payments under the Medicaid  
3 program, the Medicare program, or the Children's Health Insurance  
4 Program (CHIP) for the period on which earned surplus is based and  
5 that can be verified, if necessary.

6 Sec. 171.944. LIMITATIONS. (a) A provider may not receive  
7 a credit in an amount that exceeds the amount of the tax or  
8 assessment due after applying any other credits.

9 (b) A provider may not convey, assign, or transfer the  
10 credit allowed under this subchapter to another entity unless all  
11 of the assets of the provider are conveyed, assigned, or  
12 transferred in the same transaction.

13 (c) A provider that participates in the Medicaid program,  
14 the Medicare program, or the Children's Health Insurance Program  
15 (CHIP) as a provider of durable medical equipment or as a vendor of  
16 pharmaceuticals may not count payments for those services for  
17 purposes of qualifying for or receiving the exemption under this  
18 subchapter.

19 Sec. 171.945. RULES. The comptroller shall adopt rules to  
20 implement this subchapter. The Health and Human Services  
21 Commission shall assist the comptroller in the formulation and  
22 adoption of the rules.

23 SECTION 2.46. If a credit under Chapter 171, Tax Code, is  
24 found by a court in a final judgment upheld on appeal or no longer  
25 subject to appeal to be unconstitutional, the credit is disallowed  
26 for all entities on or after the date of the judgment, and an entity  
27 is not entitled to and may not apply for the credit the entity has



not received on or after that date for any reporting period beginning before, on, or after that date.

SECTION 2.47. (a) For an entity becoming subject to the franchise tax under this Act:

(1) income or losses, and related gross receipts, earned, paid, or accrued 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) an entity 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 the later of:

(i) January 1, 2005; or

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

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

(3) an entity 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 any time after October 31, 2005, and before January 1, 2006, based on the period:

(A) beginning the later of:

1 (i) January 1, 2005; or

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

5 (B) ending on the date the entity became no  
6 longer subject to the earned surplus component of the tax.

7 (b) For purposes of this article, an existing partnership is  
8 considered as continuing if it is not terminated.

9 (c) A partnership is considered terminated only if no part  
10 of any business, financial operation, or venture of the partnership  
11 continues to be carried on by any of its partners in a partnership.

12 (d) For a merger or consolidation of two or more  
13 partnerships, the resulting partnership is, for purposes of this  
14 article, considered the continuation of any merging or  
15 consolidating partnership whose members own an interest of more  
16 than 50 percent in the capital and profits of the resulting  
17 partnership.

18 (e) For a division of a partnership into two or more  
19 partnerships, the resulting partnerships, other than any resulting  
20 partnership the members of which had an interest of 50 percent or  
21 less in the capital and profits of the prior partnership, are, for  
22 purposes of this article, considered a continuation of the prior  
23 partnership.

24 SECTION 2.48. This article takes effect November 1, 2005,  
25 and applies to reports originally due on or after that date.

ARTICLE 3. SALES AND USE TAXES

PART A. STATE SALES AND USE TAXES

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

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

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

Sec. 151.0043. "MOTOR VEHICLE REPAIR SERVICES." (a) "Motor vehicle repair services" means the repair, remodeling, maintenance, or restoration of a motor vehicle, including testing or diagnostic services, body repair and painting, engine repair, transmission repair, exhaust system repair, brake repair, and air conditioning repair.

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

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

(a) "Taxable services" means:

1           (1) amusement services;  
2           (2) cable television services;  
3           (3) personal services;  
4           (4) motor vehicle parking and storage services;  
5           (5) the repair, remodeling, maintenance, and  
6 restoration of tangible personal property, including motor vehicle  
7 repair services, except:

8                   (A) aircraft; and  
9                   (B) a ship, boat, or other vessel, other than:  
10                       (i) a taxable boat or motor as defined by  
11 Section 160.001;

12                       (ii) a sports fishing boat; or  
13                       (iii) any other vessel used for pleasure;

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

16                   ~~[(D) the repair, maintenance, creation, and~~  
17 ~~restoration of a computer program, including its development and~~  
18 ~~modification, not sold by the person performing the repair,~~  
19 ~~maintenance, creation, or restoration service,]~~

20           (6) telecommunications services;  
21           (7) credit reporting services;  
22           (8) debt collection services;  
23           (9) insurance services;  
24           (10) information services;  
25           (11) real property services;  
26           (12) data processing services;  
27           (13) real property repair and remodeling;

(14) security services;

(15) telephone answering services;

(16) Internet access service; and

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

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

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

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

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

SECTION 3A.06. Section 151.419(b), Tax Code, is amended to read as follows:

(b) The application must be accompanied with:

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

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

1 items are exempted from the taxes imposed by this chapter; and

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

5 [~~(C) waive the discount permitted by Section~~  
6 ~~151.423 of this code on the payment of all taxes under the direct~~  
7 ~~payment permit only;~~]

8 (2) a description, in the amount of detail that the  
9 comptroller requires, of the accounting method by which the  
10 applicant proposes to differentiate between taxable and exempt  
11 transactions; and

12 (3) records establishing that the applicant is a  
13 responsible person who annually purchases taxable items that have a  
14 value when purchased of \$800,000 or more excluding the value of  
15 taxable items for which resale certificates were or could have been  
16 given.

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

19 (a) A taxpayer who prepays the taxpayer's tax liability on  
20 the basis of a reasonable estimate of the tax liability for a  
21 quarter in which a prepayment is made or for a month in which a  
22 prepayment is made may deduct and withhold 1.25 percent of the  
23 amount of the prepayment [~~in addition to the amount permitted to be~~  
24 ~~deducted and withheld under Section 151.423 of this code~~]. A  
25 reasonable estimate of the tax liability must be at least 90 percent  
26 of the tax ultimately due or the amount of tax paid in the same  
27 quarter, or month, if a monthly prepayer, in the last preceding

year. Failure to prepay a reasonable estimate of the tax will result in the loss of the entire prepayment discount.

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

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

Sec. 151.425. FORFEITURE OF DISCOUNT OR REIMBURSEMENT. If a taxpayer fails to file a report required by this chapter when due or to pay the tax when due, the taxpayer forfeits any claim to a ~~[deduction or]~~ discount allowed under ~~[Section 151.423 or]~~ Section 151.424 ~~[of this code]~~.

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

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

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

3           (a) Except as inconsistent with this chapter and rules  
4 adopted under this chapter, the seller of a motor vehicle shall  
5 report and pay the tax imposed on a seller-financed sale to the  
6 comptroller on the seller's receipts from seller-financed sales in  
7 the same manner as the sales tax is reported and paid by a retailer  
8 under Sections 151.401, 151.402, 151.405, 151.406, 151.409,  
9 [~~151.423,~~] 151.424, and 151.425.

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

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

18          SECTION 3A.13. (a) Except as otherwise provided by this  
19 section, this part takes effect September 1, 2005, if this Act  
20 receives a vote of two-thirds of all the members elected to each  
21 house, as provided by Section 39, Article III, Texas Constitution.  
22 If this Act does not receive the vote necessary for effect on that  
23 date, this part takes effect November 1, 2005.

24          (b) Section 151.051(b), Tax Code, as amended by this part,  
25 takes effect October 1, 2005, 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 effect on that date, Section  
2 151.051(b), Tax Code, takes effect January 1, 2006.

3 PART B. MOTOR VEHICLE SALES AND USE TAX

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

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

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

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

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

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

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

19 (b) The tax rate is 10 percent of the gross rental receipts  
20 from the rental of a rented motor vehicle for 30 days or less and  
21 7.35 [~~6-1/4~~] percent of the gross rental receipts from the rental of  
22 a rented motor vehicle for longer than 30 days.

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

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

27 SECTION 3B.06. Section 152.041(a), Tax Code, is amended to

read as follows:

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

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

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

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

(c) If the amount paid for a motor vehicle subject to the tax imposed by this chapter is less than the standard presumptive value of the vehicle, a county tax assessor-collector shall compute the tax on the standard presumptive value unless the purchaser establishes the retail value of the vehicle as provided by Subsection (d).

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

(1) the retail value is shown on an appraisal certified by an adjuster licensed under Chapter 4101, Insurance

1 Code, or by a motor vehicle dealer operating under Subchapter B,  
2 Chapter 503, Transportation Code;

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

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

7 (e) On request, a motor vehicle dealer operating under  
8 Subchapter B, Chapter 503, Transportation Code, shall provide a  
9 certified appraisal of the retail value of a motor vehicle. The  
10 comptroller by rule shall establish a fee that a dealer may charge  
11 for providing the certified appraisal. The county tax  
12 assessor-collector shall retain a copy of a certified appraisal  
13 received under this section for a period prescribed by the  
14 comptroller.

15 (f) The Texas Department of Transportation shall maintain  
16 information on the standard presumptive values of motor vehicles as  
17 part of the department's registration and title system. The  
18 department shall update the information at least quarterly each  
19 calendar year.

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

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

24 (1) establish standard presumptive values for motor  
25 vehicles as provided by Section 152.0412, Tax Code, as added by this  
26 part;

27 (2) modify the department's registration and title

1 system as needed to include that information and administer that  
2 section; and

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

5 SECTION 3B.09. (a) Except as provided by Subsection (b) of  
6 this section, this part 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 part takes effect on the first day of the first month  
11 that begins on or after the 91st day after the last day of the  
12 legislative session.

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

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

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

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

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

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

24 SECTION 3C.03. This part takes effect September 1, 2005, if  
25 this Act receives a vote of two-thirds of all the members elected to  
26 each house, as provided by Section 39, Article III, Texas  
27 Constitution. If this Act does not receive the vote necessary for

effect on that date, this part takes effect November 1, 2005.

ARTICLE 4. CIGARETTE AND TOBACCO PRODUCTS TAXES

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

(b) The tax rates are:

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

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

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

(b) The tax rates are:

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

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

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

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

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

(A) weigh more than three pounds per thousand;

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

(C) contain no substantial amount of nontobacco

1 ingredients; and

2 (4) \$18.75 [~~\$15~~] per thousand on cigars that:

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

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

7 (C) contain a substantial amount of nontobacco  
8 ingredients.

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

11 (b) The tax rate for tobacco products other than cigars is  
12 44.02 [~~35.213~~] percent of the manufacturer's list price, exclusive  
13 of any trade discount, special discount, or deal.

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

19 ARTICLE 5. EFFECTIVE DATE

20 SECTION 5.01. (a) Except as provided by Subsection (b) of  
21 this section, this Act takes effect September 1, 2005, if this Act  
22 receives a vote of two-thirds of all the members elected to each  
23 house, as provided by Section 39, Article III, Texas Constitution.  
24 If this Act does not receive the vote necessary for effect on that  
25 date, this Act takes effect November 1, 2005.

26 (b) If a section, part, or article of this Act provides a  
27 different effective date than provided by Subsection (a) of this

H.B. No. 3

1 section, that section, part, or article takes effect according to  
2 its terms.