

1-1 By: Keffer of Eastland (Senate Sponsor - Ogden) H.B. No. 3
1-2 (In the Senate - Received from the House July 7, 2005;
1-3 July 7, 2005, read first time and referred to Committee on Finance;
1-4 July 8, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 5; July 8, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3 By: Ogden

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to financing public schools in this state and reducing
1-11 property taxes.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 ARTICLE 1. SCHOOL PROPERTY TAX RELIEF

1-14 SECTION 1.01. Section 45.003, Education Code, is amended by
1-15 amending Subsection (d) and adding Subsections (d-1), (d-2), and
1-16 (e) to read as follows:

1-17 (d) A proposition submitted to authorize the levy of
1-18 maintenance taxes must include the question of whether the
1-19 governing board or commissioners court may levy, assess, and
1-20 collect annual ad valorem taxes for the further maintenance of
1-21 public schools, at a rate not to exceed the rate stated in the
1-22 proposition, which may be not more than the sum of:

1-23 (1) \$1.05 [~~\$1.50~~] on the \$100 valuation of taxable
1-24 property in the district; and

1-25 (2) \$0.15 on the \$100 valuation of taxable property in
1-26 the district for enrichment, as authorized by an election as
1-27 provided by Chapter 42[~~, stated in the proposition~~].

1-28 (d-1) Notwithstanding Subsection (d), for the following tax
1-29 years, a proposition submitted to authorize the levy of maintenance
1-30 taxes must include the question of whether the governing board or
1-31 commissioners court may levy, assess, and collect annual ad valorem
1-32 taxes for the further maintenance of public schools, at a rate not
1-33 to exceed the rate stated in the proposition, which may be not more
1-34 than the sum of:

1-35 (1) for the 2005 tax year:

1-36 (A) \$1.30 on the \$100 valuation of taxable
1-37 property in the district; and

1-38 (B) \$0.15 on the \$100 valuation of taxable
1-39 property in the district for enrichment, as authorized by an
1-40 election as provided by Chapter 42; and

1-41 (2) for the 2006, 2007, and 2008 tax years:

1-42 (A) \$1.11 on the \$100 valuation of taxable
1-43 property in the district; and

1-44 (B) \$0.15 on the \$100 valuation of taxable
1-45 property in the district for enrichment, as authorized by an
1-46 election as provided by Chapter 42.

1-47 (d-2) Subsection (d-1) and this subsection expire January
1-48 1, 2009.

1-49 (e) An election held before January 1, 2005, authorizing a
1-50 maintenance tax at a rate of at least \$1.30 on the \$100 valuation of
1-51 taxable property in the district is sufficient to authorize a rate
1-52 of \$1.30 or less for the 2005 tax year. An election held before
1-53 January 1, 2006, authorizing a maintenance tax at a rate of at least
1-54 \$1.11 on the \$100 valuation of taxable property in the district is
1-55 sufficient to authorize a rate of \$1.11 or less for the 2006, 2007,
1-56 and 2008 tax years. An election held before January 1, 2009,
1-57 authorizing a maintenance tax at a rate of at least \$1.05 on the
1-58 \$100 valuation of taxable property in the district is sufficient to
1-59 authorize a rate of \$1.05 or less for the 2009 and subsequent tax
1-60 years.

1-61 SECTION 1.02. (a) The changes in law made by this article
1-62 apply to the maintenance and operations tax rate of a school
1-63 district beginning with the 2005 tax year.

(b) If before the effective date of this article, the governing body of a school district adopted an ad valorem tax rate for the district for the 2005 tax year under the law in effect immediately before the effective date of this article, and the adopted ad valorem tax rate included a rate for maintenance and operations expenses that is greater than the maximum maintenance and operations tax rate for the 2005 tax year permitted under this article:

(1) on the effective date of this article, the ad valorem tax rate adopted for the district is invalidated; and

(2) the governing body shall adopt an ad valorem tax rate for the 2005 tax year in accordance with the changes in law made by this article.

(c) If tax bills for the 2005 tax year were sent by the tax assessor for a school district pursuant to a tax rate invalidated under Subsection (b)(1) of this section, the tax assessor for the school district shall prepare and mail a new tax bill for the 2005 tax year to each taxpayer of the district in the manner required by Chapter 31, Tax Code. If a taxpayer pays the taxes for the 2005 tax year pursuant to a tax rate invalidated under Subsection (b)(1) of this section, the school district shall refund any difference between the tax paid and the tax due at the rate adopted under Subsection (b)(2) of this section.

(d) If this Act is passed by the legislature without receiving a vote of two-thirds of all the members elected to each house, any action taken before the effective date of this article in preparation for the implementation of the changes in law made by this article, including adoption of a maintenance and operations tax rate, by an officer or employee or the governing body of a school district that the officer, employee, or governing body determines is necessary or appropriate and that the officer, employee, or governing body would have been authorized to take had this article been in effect at the time of the action is validated as of the effective date of this article. Any public notice required by Chapter 26, Tax Code, or Chapter 44, Education Code, given before the effective date of this article that includes an additional statement that the tax rate for the school district will be adopted in accordance with the changes in law made by this article is validated as of the effective date of this article.

ARTICLE 2. FRANCHISE TAX

PART A. CORPORATE OWNERSHIP IN PARTNERSHIPS

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

(c) Any tax, interest, or penalties due to the state under Chapter 171 by a person who is subject to that tax by application of Section 171.001(d-1) are additionally secured by a lien on the person's interest in the partnership doing business in this state whose activities cause the person to be subject to that tax, including a general or limited partnership interest that the person is considered to own under Sections 171.001(e-1) and (f).

SECTION 2A.02. Section 171.001(b), Tax Code, is amended by adding Subdivisions (6-a) and (6-b) to read as follows:

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

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

SECTION 2A.03. Section 171.001, Tax Code, is amended by adding Subsections (d-1), (e-1), (f), and (g) to read as follows:

(d-1) For purposes of Subsection (a), a corporation that "does business in this state" includes a corporation:

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

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

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

(e-1) For purposes of Subsection (d-1), a partner who owns

3-1 an interest in an upper tier partnership is considered to be both a
 3-2 partner in the upper tier partnership and a partner in each lower
 3-3 tier partnership.

3-4 (f) For purposes of Subsection (d-1)(3), a limited partner
 3-5 is considered to hold a controlling interest if any related party
 3-6 owns a controlling interest, directly or indirectly, in the
 3-7 partnership. In this subsection, "controlling interest" and
 3-8 "related party" have the meanings assigned those terms by Section
 3-9 171.1001.

3-10 (g) If a corporate partner subject to tax under Subsection
 3-11 (d-1) asserts in a refund claim or a redetermination hearing that
 3-12 the tax imposed under this chapter violates the United States
 3-13 Constitution or federal law because of the application of
 3-14 Subsection (d-1), the franchise tax is imposed on the partnership
 3-15 doing business in this state for the privilege periods for which the
 3-16 assertion is made and the franchise tax liability of the
 3-17 partnership shall be calculated as provided by Sections 171.101(d)
 3-18 and 171.110(d-3).

3-19 SECTION 2A.04. Section 171.101, Tax Code, is amended by
 3-20 adding Subsection (d) to read as follows:

3-21 (d) For purposes of Section 171.001(g), net taxable capital
 3-22 for a partnership, to the extent the partnership is owned directly
 3-23 or indirectly by a corporation, is computed by:

3-24 (1) adding the partner's contributions and surplus, as
 3-25 determined under Section 171.109 in the same manner as a
 3-26 corporation, to determine the partnership's taxable capital;

3-27 (2) apportioning the amount determined under
 3-28 Subdivision (1) to this state in the same manner that the taxable
 3-29 capital of a corporation is apportioned to this state under Section
 3-30 171.106(a) or (c), as applicable, to determine the partnership's
 3-31 apportioned taxable capital; and

3-32 (3) subtracting from the amount computed under
 3-33 Subdivision (2) any other allowable deductions, to determine the
 3-34 partnership's net taxable capital.

3-35 SECTION 2A.05. Section 171.1032(c), Tax Code, is amended to
 3-36 read as follows:

3-37 (c) A corporation shall include in its gross receipts
 3-38 computed under Subsection (a) the corporation's share of the gross
 3-39 receipts of each partnership and joint venture in which the
 3-40 corporation directly or indirectly owns an interest [of which the
 3-41 corporation is a part] apportioned to this state as though the
 3-42 corporation directly earned the receipts[, including receipts from
 3-43 business done with the corporation]. A corporation that owns an
 3-44 interest in an upper tier partnership is considered to be a partner
 3-45 in both the upper tier partnership and each lower tier partnership,
 3-46 and the corporation's share of the gross receipts of each
 3-47 partnership of which it is a partner is computed and apportioned to
 3-48 this state as though the corporation directly earned the receipts
 3-49 at the partnership tier at which the receipts were originally
 3-50 earned.

3-51 SECTION 2A.06. Section 171.1051(d), Tax Code, is amended to
 3-52 read as follows:

3-53 (d) A corporation shall include in its gross receipts
 3-54 computed under Subsection (a) the corporation's share of the gross
 3-55 receipts of each partnership and joint venture in which the
 3-56 corporation directly or indirectly owns an interest [of which the
 3-57 corporation is a part]. A corporation that owns an interest in an
 3-58 upper tier partnership is considered to be a partner in both the
 3-59 upper tier partnership and each lower tier partnership, and the
 3-60 corporation's share of the gross receipts of each partnership of
 3-61 which it is a partner is computed as though the corporation directly
 3-62 earned the receipts at the partnership tier at which the receipts
 3-63 were originally earned.

3-64 SECTION 2A.07. Section 171.110, Tax Code, is amended by
 3-65 adding Subsections (d-2) and (d-3) to read as follows:

3-66 (d-2) In computing net taxable earned surplus, a
 3-67 corporation shall include the corporation's share of a
 3-68 partnership's items of income or loss, without regard to whether
 3-69 the partnership is taxed as a corporation for federal income tax

4-1 purposes.

4-2 (d-3) For purposes of Section 171.001(g), reportable
 4-3 federal taxable income for a partnership is the partnership's
 4-4 income as an entity, to the extent that the partnership is owned
 4-5 directly or indirectly by a corporation, as determined under rules
 4-6 adopted by the comptroller using principles similar to the
 4-7 standards applied to a corporation.

4-8 SECTION 2A.08. Section 171.1121, Tax Code, is amended by
 4-9 adding Subsection (f) to read as follows:

4-10 (f) A corporation that owns an interest in an upper tier
 4-11 partnership is considered to be a partner in both the upper tier
 4-12 partnership and each lower tier partnership, and the corporation's
 4-13 share of the gross receipts of each partnership of which it is a
 4-14 partner is computed and apportioned to this state as though the
 4-15 corporation directly earned the receipts at the partnership tier at
 4-16 which the receipts were originally earned.

4-17 SECTION 2A.09. This part takes effect November 1, 2005, and
 4-18 applies to reports originally due on or after that date.

4-19 PART B. APPLICATION TO PARTNERSHIPS

4-20 SECTION 2B.01. (a) This part takes effect only if a court
 4-21 enters a final judgment that the tax imposed under Chapter 171, Tax
 4-22 Code, violates the United States Constitution or federal law
 4-23 because of the application of Section 171.001(d-1), Tax Code.

4-24 (b) This part takes effect on the earlier of the date that
 4-25 the final judgment under Subsection (a) of this section is upheld on
 4-26 appeal without any possibility of further appeal or is not appealed
 4-27 and is no longer subject to appeal, and applies to a report
 4-28 originally due on or after that date.

4-29 SECTION 2B.02. Section 113.001, Tax Code, is amended by
 4-30 adding Subsection (c-1) to read as follows:

4-31 (c-1) Any tax, interest, or penalties due to the state under
 4-32 Chapter 171 by a person who is subject to that tax by application of
 4-33 Sections 171.001(a)(3)-(5) are additionally secured by a lien on
 4-34 the person's interest in the partnership doing business in this
 4-35 state whose activities cause the person to be subject to that tax.

4-36 SECTION 2B.03. Section 171.001(a), Tax Code, is amended to
 4-37 read as follows:

4-38 (a) A franchise tax is imposed on:

4-39 (1) each corporation that does business in this state
 4-40 or that is chartered in this state; ~~and~~

4-41 (2) each limited liability company that does business
 4-42 in this state or that is organized under the laws of this state;

4-43 (3) each general partnership that is doing business in
 4-44 this state to the extent the general partnership, including an
 4-45 interest as an assignee, is owned directly or indirectly by a
 4-46 corporation;

4-47 (4) each limited partnership that is doing business in
 4-48 this state to the extent the general partner's interest, including
 4-49 an interest as an assignee, in the limited partnership is owned
 4-50 directly or indirectly by a corporation; and

4-51 (5) each limited partnership in which a corporate
 4-52 limited partner owns a controlling interest, including an interest
 4-53 as an assignee, that is doing business in this state.

4-54 SECTION 2B.04. Section 171.001(b)(3), Tax Code, is amended
 4-55 to read as follows:

4-56 (3) "Corporation" includes:

4-57 (A) a limited liability company, as defined under
 4-58 the Texas Limited Liability Company Act;

4-59 (B) a savings and loan association; ~~and~~

4-60 (C) a banking corporation; and

4-61 (D) a partnership.

4-62 SECTION 2B.05. Section 171.101, Tax Code, is amended by
 4-63 adding Subsection (d-1) to read as follows:

4-64 (d-1) Net taxable capital for a partnership, to the extent
 4-65 the partnership is owned directly or indirectly by a corporation,
 4-66 is computed by:

4-67 (1) adding the partner's contributions and surplus, as
 4-68 determined under Section 171.109 in the same manner as a
 4-69 corporation, to determine the partnership's taxable capital;

5-1 (2) apportioning the amount determined under
 5-2 Subdivision (1) to this state in the same manner that the taxable
 5-3 capital of a corporation is apportioned to this state under Section
 5-4 171.106(a) or (c), as applicable, to determine the partnership's
 5-5 apportioned taxable capital; and

5-6 (3) subtracting from the amount computed under
 5-7 Subdivision (2) any other allowable deductions, to determine the
 5-8 partnership's net taxable capital.

5-9 SECTION 2B.06. Section 171.110, Tax Code, is amended by
 5-10 adding Subsection (d-4) to read as follows:

5-11 (d-4) Reportable federal taxable income for a partnership
 5-12 is the partnership's income as an entity, to the extent that the
 5-13 partnership is owned directly or indirectly by a corporation, as
 5-14 determined under rules adopted by the comptroller using principles
 5-15 similar to the standards applied to a corporation.

5-16 SECTION 2B.07. Subchapter E, Chapter 171, Tax Code, is
 5-17 amended by adding Section 171.213 to read as follows:

5-18 Sec. 171.213. REGISTRATION OF LIMITED PARTNERSHIPS. (a)
 5-19 Each limited partnership doing business in this state shall file
 5-20 with the comptroller a disclosure that identifies each of its
 5-21 limited partners that own at least a 20 percent interest in the
 5-22 partnership.

5-23 (b) The comptroller may adopt rules to implement this
 5-24 section.

5-25 SECTION 2B.08. Subchapter F, Chapter 171, Tax Code, is
 5-26 amended by adding Section 171.2515 to read as follows:

5-27 Sec. 171.2515. FORFEITURE OF RIGHT OF PARTNERSHIP TO
 5-28 TRANSACT BUSINESS IN THIS STATE. (a) The comptroller may, for the
 5-29 same reasons and using the same procedures the comptroller uses in
 5-30 relation to the forfeiture of the corporate privileges of a
 5-31 corporation, forfeit the right of a partnership subject to a tax
 5-32 imposed by this chapter to transact business in this state.

5-33 (b) The provisions of this subchapter, including Section
 5-34 171.255, that apply to the forfeiture of corporate privileges apply
 5-35 to the forfeiture of a partnership's right to transact business in
 5-36 this state.

5-37 SECTION 2B.09. The following provisions of the Tax Code are
 5-38 repealed:

- 5-39 (1) Section 113.001(c);
- 5-40 (2) Sections 171.001(d-1), (e-1), (f), and (g);
- 5-41 (3) Section 171.101(d);
- 5-42 (4) Section 171.1032(c);
- 5-43 (5) Section 171.1051(d);
- 5-44 (6) Sections 171.110(d-2) and (d-3); and
- 5-45 (7) Section 171.1121(f).

5-46 SECTION 2B.10. (a) For a partnership becoming subject to
 5-47 the franchise tax under this part, income or losses and related
 5-48 gross receipts occurring before one year before the effective date
 5-49 of this part may not be considered for purposes of the earned
 5-50 surplus component or for apportionment purposes for the taxable
 5-51 capital component.

5-52 (b) The comptroller shall adopt rules relating to
 5-53 establishing the applicable reporting periods for partnerships
 5-54 becoming subject to the franchise tax under this part.

5-55 PART C. ADD-BACK OF CERTAIN PAYMENTS

5-56 SECTION 2C.01. Subchapter C, Chapter 171, Tax Code, is
 5-57 amended by adding Section 171.1001 to read as follows:

5-58 Sec. 171.1001. DEFINITIONS. In this subchapter:

5-59 (1) "Arm's length" means the standard of conduct under
 5-60 which unrelated parties having substantially equal bargaining
 5-61 power, each acting in its own interest, would negotiate or carry out
 5-62 a particular transaction.

5-63 (2) "Control" or "controlling interest" means:

5-64 (A) for a corporation, either 50 percent or more,
 5-65 owned directly or indirectly, of the total combined voting power of
 5-66 all classes of stock of the corporation, or 50 percent or more,
 5-67 owned directly or indirectly, of the beneficial ownership interest
 5-68 in the voting stock of the corporation; and

5-69 (B) for a partnership, association, trust, or

6-1 other entity, 50 percent or more, owned directly or indirectly, of
 6-2 the capital, profits, or beneficial interest in the partnership,
 6-3 association, trust, or other entity.

6-4 (3) "Interest payment" means an amount allowable as an
 6-5 interest deduction under Section 163, Internal Revenue Code.

6-6 (4) "Management fee" means a fee for services of a
 6-7 managerial or administrative nature, including services pertaining
 6-8 to management, accounts receivable and payable, employee benefit
 6-9 plans, insurance, legal matters, payroll, data processing,
 6-10 purchasing, taxes, financial matters, securities, accounting,
 6-11 reporting, and compliance.

6-12 (5) "Related party" means any entity that directly or
 6-13 indirectly controls, is controlled by, or is under common control
 6-14 with, the entity subject to the tax imposed under this chapter. The
 6-15 term includes, but is not limited to, parents, subsidiaries,
 6-16 pass-through entities, and disregarded entities.

6-17 (6) "Royalty payment" means a payment directly
 6-18 connected to the acquisition, use, maintenance or management,
 6-19 ownership, sale, exchange, or any other disposition of licenses,
 6-20 trademarks, copyrights, trade names, trade dress, service marks,
 6-21 mask works, trade secrets, patents, or any other similar types of
 6-22 intangible assets as determined by the comptroller.

6-23 (7) "Valid business purpose" means one or more
 6-24 business purposes, other than the avoidance or reduction of taxes,
 6-25 that alone or in combination constitute the primary motivation for
 6-26 a business activity or transaction that changes in a meaningful
 6-27 way, apart from tax effects, the economic position of the entity. A
 6-28 valid business purpose includes compliance with a regulatory
 6-29 requirement of:

6-30 (A) the federal government;
 6-31 (B) a state or local government;
 6-32 (C) a foreign nation; or
 6-33 (D) an agency or political subdivision of any
 6-34 entity listed in Paragraphs (A)-(C).

6-35 SECTION 2C.02. Section 171.103, Tax Code, is amended to
 6-36 read as follows:

6-37 Sec. 171.103. DETERMINATION OF GROSS RECEIPTS FROM BUSINESS
 6-38 DONE IN THIS STATE FOR TAXABLE CAPITAL. In apportioning taxable
 6-39 capital, the gross receipts of a corporation from its business done
 6-40 in this state is the sum of the corporation's receipts from:

6-41 (1) each sale of tangible personal property if the
 6-42 property is delivered or shipped to a buyer in this state regardless
 6-43 of the FOB point or another condition of the sale[, and each sale of
 6-44 tangible personal property shipped from this state to a purchaser
 6-45 in another state in which the seller is not subject to taxation];

6-46 (2) each service performed in this state;

6-47 (3) each rental of property situated in this state;

6-48 (4) the use of a patent, copyright, trademark,
 6-49 franchise, or license in this state;

6-50 (5) each sale of real property located in this state,
 6-51 including royalties from oil, gas, or other mineral interests; and

6-52 (6) other business done in this state.

6-53 SECTION 2C.03. Section 171.1032(a), Tax Code, is amended to
 6-54 read as follows:

6-55 (a) Except for the gross receipts of a corporation that are
 6-56 subject to the provisions of Section 171.1061, in apportioning
 6-57 taxable earned surplus, the gross receipts of a corporation from
 6-58 its business done in this state is the sum of the corporation's
 6-59 receipts from:

6-60 (1) each sale of tangible personal property if the
 6-61 property is delivered or shipped to a buyer in this state regardless
 6-62 of the FOB point or another condition of the sale[, and each sale of
 6-63 tangible personal property shipped from this state to a purchaser
 6-64 in another state in which the seller is not subject to any tax on, or
 6-65 measured by, net income, without regard to whether the tax is
 6-66 imposed];

6-67 (2) each service performed in this state;

6-68 (3) each rental of property situated in this state;

6-69 (4) the use of a patent, copyright, trademark,

7-1 franchise, or license in this state;

7-2 (5) each sale of real property located in this state,
7-3 including royalties from oil, gas, or other mineral interests;

7-4 (6) each partnership or joint venture to the extent
7-5 provided by Subsection (c); and

7-6 (7) other business done in this state.

7-7 SECTION 2C.04. Subchapter C, Chapter 171, Tax Code, is
7-8 amended by adding Sections 171.1101-171.1103 to read as follows:

7-9 Sec. 171.1101. ADD-BACK OF PAYMENTS TO RELATED PARTY.

7-10 Except as provided by Section 171.1102, an entity subject to the tax
7-11 under this chapter shall add back to reportable federal taxable
7-12 income any royalty payments, interest payments, and management fees
7-13 made to a related party during the period on which earned surplus is
7-14 based to the extent deducted in computing reportable federal
7-15 taxable income.

7-16 Sec. 171.1102. SAFE HARBORS FOR CERTAIN PAYMENTS AND FEES.

7-17 (a) An entity subject to the tax under this chapter is not required
7-18 to add back royalty payments to a related party to the extent:

7-19 (1) the related party during the period on which
7-20 earned surplus is based directly or indirectly paid or incurred the
7-21 amount to a person or entity that is not a related party, the
7-22 transaction was done for a valid business purpose, and the payments
7-23 were made at arm's length; or

7-24 (2) the royalty payments are paid or incurred to a
7-25 related party organized under the laws of a foreign nation, are
7-26 subject to a comprehensive income tax treaty between the foreign
7-27 nation and the United States, and are taxed in the foreign nation at
7-28 a tax rate equal to or greater than the rate under Section
7-29 171.002(a)(2).

7-30 (b) An entity subject to the tax under this chapter is not
7-31 required to add back interest payments to a related party to the
7-32 extent:

7-33 (1) the interest is at or below the applicable federal
7-34 rate compounded annually for debt instruments under Section
7-35 1274(d), Internal Revenue Code, that was in effect at the time of
7-36 the agreement;

7-37 (2) the related party during the period on which
7-38 earned surplus is based directly or indirectly paid or incurred the
7-39 amount to a person or entity that is not a related party, the
7-40 transaction was done for a valid business purpose, and the payments
7-41 were made at arm's length; or

7-42 (3) the interest payments are paid or incurred to a
7-43 related party organized under the law of a foreign nation, are
7-44 subject to a comprehensive income tax tax treaty between the
7-45 foreign nation and the United States, and are taxed in the foreign
7-46 nation at a rate equal to or greater than the rate under Section
7-47 171.002(a)(2).

7-48 (c) An entity subject to the tax under this chapter may
7-49 deduct payments for royalty, interest, or management fees received
7-50 from a related party if the payments are included in the income of
7-51 the related party and a tax on the income is paid to this state,
7-52 another state or states, or both this state and another state or
7-53 states, each of which has a tax rate equal to or greater than the
7-54 rate under Section 171.002(a)(2).

7-55 (d) An entity subject to the tax under this chapter is not
7-56 required to add back a management fee paid to a related party to the
7-57 extent that the transaction was done for a valid business purpose
7-58 and the fee was paid at arm's length.

7-59 Sec. 171.1103. ADJUSTMENT TO INCOME AND EXPENSES BY
7-60 COMPTRROLLER. (a) The comptroller may distribute, apportion, or
7-61 allocate gross income, deductions, credits, or allowances between
7-62 or among two or more organizations, trades, or businesses, whether
7-63 or not incorporated, whether or not organized in the United States,
7-64 and whether or not affiliated, if:

7-65 (1) the organizations, trades, or businesses are owned
7-66 or controlled directly or indirectly by the same interests; and

7-67 (2) the comptroller determines that the distribution,
7-68 apportionment, or allocation is necessary to reflect an arm's
7-69 length standard, within the meaning of 26 C.F.R. Section 1.482-1,

8-1 and to clearly reflect the income of those organizations, trades,
 8-2 or businesses.

8-3 (b) The comptroller shall consider the administrative and
 8-4 judicial interpretations of Section 482, Internal Revenue Code, in
 8-5 administering this section.

8-6 PART D. TRANSITIONAL PROVISIONS FOR PARTS A, B, AND C

8-7 SECTION 2D.01. (a) Subject to other provisions of this
 8-8 section, Parts A, B, and C of this article apply to reports
 8-9 originally due on or after the effective date of those parts.

8-10 (b) For a corporation becoming subject to the franchise tax
 8-11 under this article:

8-12 (1) income or losses, and related gross receipts,
 8-13 occurring before January 1, 2005, may not be considered for
 8-14 purposes of the earned surplus component, or for apportionment
 8-15 purposes for the taxable capital component;

8-16 (2) a corporation subject to the franchise tax on
 8-17 January 1, 2006, for which January 1, 2006, is not the beginning
 8-18 date, shall file an annual report due May 15, 2006, based on the
 8-19 period:

8-20 (A) beginning on the later of:

8-21 (i) January 1, 2005; or

8-22 (ii) the date the corporation was organized
 8-23 in this state or, if a foreign corporation, the date it began doing
 8-24 business in this state; and

8-25 (B) ending on the date the corporation's last
 8-26 accounting period ends in 2005 or, if none, on December 31, 2005;
 8-27 and

8-28 (3) a corporation subject to the earned surplus
 8-29 component of the franchise tax at any time after October 31, 2005,
 8-30 and before January 1, 2006, but not subject to the earned surplus
 8-31 component on January 1, 2006, shall file a final report computed on
 8-32 net taxable earned surplus, for the privilege of doing business at
 8-33 any time after October 31, 2005, and before January 1, 2006, based
 8-34 on the period:

8-35 (A) beginning on the later of:

8-36 (i) January 1, 2005; or

8-37 (ii) the date the corporation was organized
 8-38 in this state or, if a foreign corporation, the date it began doing
 8-39 business in this state; and

8-40 (B) ending on the date the corporation became no
 8-41 longer subject to the earned surplus component of the tax.

8-42 SECTION 2D.02. Parts A, B, and C of this article take
 8-43 effect, except as provided by those parts, November 1, 2005, and
 8-44 apply to reports originally due on or after that date.

8-45 PART E. REVISED FRANCHISE TAX

8-46 SECTION 2E.01. This part takes effect as provided by Section
 8-47 2E.49 of this part.

8-48 SECTION 2E.02. Section 171.001, Tax Code, is amended to
 8-49 read as follows:

8-50 Sec. 171.001. TAX IMPOSED. (a) A franchise tax is imposed
 8-51 on[+]

8-52 [~~(1)~~] each taxable entity [~~corporation~~] that does
 8-53 business in this state or that is chartered or organized in this
 8-54 state[~~, and~~

8-55 [~~(2) each limited liability company that does business~~
 8-56 ~~in this state or that is organized under the laws of this state].~~

8-57 (b) In this chapter:

8-58 (1) "Banking corporation" means each state, national,
 8-59 domestic, or foreign bank, whether organized under the laws of this
 8-60 state, another state, or another country, or under federal law,
 8-61 including a limited banking association organized under Subtitle A,
 8-62 Title 3, Finance Code, and each bank organized under Section 25(a),
 8-63 Federal Reserve Act (12 U.S.C. Secs. 611-631) (edge corporations),
 8-64 but does not include a bank holding company as that term is defined
 8-65 by Section 2, Bank Holding Company Act of 1956 (12 U.S.C. Sec.
 8-66 1841).

8-67 (2) "Beginning date" means:

8-68 (A) for a taxable entity [~~corporation~~] chartered
 8-69 or organized in this state, the date on which the taxable entity's

9-1 ~~[corporation's]~~ charter or organization takes effect; or ~~[and]~~
 9-2 (B) for any other taxable entity ~~[a foreign~~
 9-3 ~~corporation]~~, the date on which the taxable entity ~~[corporation]~~
 9-4 begins doing business in this state.

9-5 (3) "Corporation" includes:

9-6 (A) a limited liability company, as defined under
 9-7 the Texas Limited Liability Company Act;
 9-8 (B) a savings and loan association; and
 9-9 (C) a banking corporation.

9-10 (4) "Charter" includes a limited liability company's
 9-11 certificate of organization, a limited partnership's certificate
 9-12 of limited partnership, and the registration of a limited liability
 9-13 partnership.

9-14 (5) "Internal Revenue Code" means the Internal Revenue
 9-15 Code of 1986 in effect ~~[for the federal tax year beginning]~~ on ~~[or~~
 9-16 ~~after]~~ January 1, 2005, not including any changes made by federal
 9-17 law after that date ~~[1996, and before January 1, 1997]~~, and any
 9-18 regulations adopted under that code ~~[applicable to that period].~~

9-19 (6) "Officer" and "director" include a limited
 9-20 liability company's directors and managers and a limited banking
 9-21 association's directors and managers and participants if there are
 9-22 no directors or managers.

9-23 (7) "Savings and loan association" means a savings and
 9-24 loan association or savings bank, whether organized under the laws
 9-25 of this state, another state, or another country, or under federal
 9-26 law.

9-27 (8) "Shareholder" includes a limited liability
 9-28 company's member and a limited banking association's participant.

9-29 (c) The tax imposed under this chapter extends to the limits
 9-30 of the United States Constitution and the federal law adopted under
 9-31 the United States constitution.

9-32 (d) On or before November 1 of each even-numbered year, the
 9-33 comptroller shall submit proposed legislation to update the
 9-34 definition of "Internal Revenue Code" in Subsection (b) to:

9-35 (1) the governor;

9-36 (2) the lieutenant governor;

9-37 (3) the speaker of the house of representatives;

9-38 (4) the chair of the Senate Committee on Finance; and

9-39 (5) the chair of the House Committee on Ways and Means.

9-40 SECTION 2E.03. Sections 171.0011(a), (b), and (c), Tax
 9-41 Code, are amended to read as follows:

9-42 (a) An additional tax is imposed on a taxable entity
 9-43 ~~[corporation]~~ that for any reason becomes no longer subject to the
 9-44 earned surplus component of the tax, without regard to whether the
 9-45 taxable entity ~~[corporation]~~ remains subject to the taxable capital
 9-46 component of the tax.

9-47 (b) The additional tax is equal to 4.25 ~~[4.5]~~ percent of the
 9-48 taxable entity's ~~[corporation's]~~ net taxable earned surplus
 9-49 computed on the period beginning on the day after the last day for
 9-50 which the tax imposed on net taxable earned surplus was computed
 9-51 under Section 171.1532 and ending on the date the taxable entity
 9-52 ~~[corporation]~~ is no longer subject to the earned surplus component
 9-53 of the tax.

9-54 (c) The additional tax imposed and any report required by
 9-55 the comptroller are due on the 60th day after the date the taxable
 9-56 entity ~~[corporation]~~ becomes no longer subject to the earned
 9-57 surplus component of the tax.

9-58 SECTION 2E.04. Subchapter A, Chapter 171, Tax Code, is
 9-59 amended by adding Section 171.0013 to read as follows:

9-60 Sec. 171.0013. TAXABLE ENTITY. (a) Except as provided by
 9-61 Subsection (b), "taxable entity" means a general partnership,
 9-62 limited partnership, limited liability partnership, corporation,
 9-63 banking corporation, savings and loan association, limited
 9-64 liability company, trust, business trust, professional
 9-65 association, business association, joint venture, joint stock
 9-66 company, holding company, or other legal entity.

9-67 (b) "Taxable entity" does not include:

9-68 (1) a sole proprietorship; or

9-69 (2) a passive entity as described by Subsection (c).

(c) An entity is a passive entity only if:

(1) the entity is a limited partnership or a trust, other than a business trust;

(2) the entity makes no payments of wages or other compensation to employees or independent contractors, other than for accounting or legal services reasonably necessary for the operation of the entity;

(3) during the period on which earned surplus is based, the entity receives at least 90 percent of its income from one or more of the following:

(A) interest;

(B) dividends;

(C) real property rents;

(D) gains from the sale of real property and securities, other than a sale of securities of an entity that constitutes a controlling interest held by the selling entity and its related parties; or

(E) mineral royalties and other nonoperating mineral interests;

(4) the income described in Subdivision (3) comes only from assets acquired and held for investment purposes; and

(5) the entity is not engaged in the active conduct of a trade or business.

(d) For purposes of Subsection (c), an entity is engaged in the active conduct of a trade or business if:

(1) the entity:

(A) performs activities that include one or more active operations that form a part of the process of earning income or profit; and

(B) performs active management and operational functions; or

(2) assets held by the entity are used in the active trade or business of one or more related entities.

(e) For purposes of Subsection (d)(1), activities performed by an entity include activities performed by persons outside the entity, including independent contractors, to the extent the persons perform the activities on behalf of the entity and those activities constitute all or part of the entity's trade or business.

SECTION 2E.05. Sections 171.002(a), (b), and (d), Tax Code, are amended to read as follows:

(a) The rates of the franchise tax are:

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

(2) 4.25 [~~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).

(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:

(i) for a taxable entity other than a general partnership, \$150,000; and

(ii) for a general partnership, \$300,000; and

(B) from its entire business under Section 171.1051, including the amount excepted under Section 171.1051(a),

11-1 is less than:

11-2 (i) for a taxable entity other than a
 11-3 general partnership, \$150,000; and

11-4 (ii) for a general partnership, \$300,000.

11-5 SECTION 2E.06. Subchapter B, Chapter 171, Tax Code, is
 11-6 amended by adding Section 171.088 to read as follows:

11-7 Sec. 171.088. EXEMPTION--NONCORPORATE TAXABLE ENTITY
 11-8 ELIGIBLE FOR CERTAIN EXEMPTIONS. A taxable entity that is not a
 11-9 corporation but that, because of its activities, would qualify for
 11-10 a specific exemption under this subchapter if it were a corporation
 11-11 qualifies for the exemption and is exempt from the tax in the same
 11-12 manner and under the same conditions as a corporation.

11-13 SECTION 2E.07. Section 171.101, Tax Code, is amended to
 11-14 read as follows:

11-15 Sec. 171.101. DETERMINATION OF NET TAXABLE CAPITAL. (a)
 11-16 The [~~Except as provided by Subsections (b) and (c), the~~] net
 11-17 taxable capital of a taxable entity [~~corporation~~] is computed by:

11-18 (1) [~~adding the corporation's stated capital, as~~
 11-19 ~~defined by Article 1.02, Texas Business Corporation Act, and the~~
 11-20 ~~corporation's surplus, to determine the corporation's taxable~~
 11-21 ~~capital,~~

11-22 [~~(2)~~] apportioning the taxable entity's surplus
 11-23 [~~corporation's taxable capital~~] to this state as provided by
 11-24 Section 171.106(a) or (c), as applicable, to determine the taxable
 11-25 entity's [~~corporation's~~] apportioned taxable capital; and

11-26 (2) [~~(3)~~] subtracting from the amount computed under
 11-27 Subdivision (1) [~~(2)~~] any other allowable deductions to determine
 11-28 the taxable entity's [~~corporation's~~] net taxable capital.

11-29 [~~(b) The net taxable capital of a limited liability company~~
 11-30 ~~is computed by:~~

11-31 [~~(1) adding the company's members' contributions, as~~
 11-32 ~~provided for under the Texas Limited Liability Company Act, and~~
 11-33 ~~surplus to determine the company's taxable capital,~~

11-34 [~~(2) apportioning the amount determined under~~
 11-35 ~~Subdivision (1) to this state in the same manner that the taxable~~
 11-36 ~~capital of a corporation is apportioned to this state under Section~~
 11-37 ~~171.106(a) or (c), as applicable, to determine the company's~~
 11-38 ~~apportioned taxable capital, and~~

11-39 [~~(3) subtracting from the amount computed under~~
 11-40 ~~Subdivision (2) any other allowable deductions, to determine the~~
 11-41 ~~company's net taxable capital.~~

11-42 [~~(c) The net taxable capital of a savings and loan~~
 11-43 ~~association is computed by:~~

11-44 [~~(1) determining the association's net worth, and~~

11-45 [~~(2) apportioning the amount determined under~~
 11-46 ~~Subdivision (1) to this state in the same manner that the taxable~~
 11-47 ~~capital of a corporation is apportioned to this state under Section~~
 11-48 ~~171.106(a) to determine the association's net taxable capital.]~~

11-49 SECTION 2E.08. Section 171.103, Tax Code, is amended to
 11-50 read as follows:

11-51 Sec. 171.103. DETERMINATION OF GROSS RECEIPTS FROM BUSINESS
 11-52 DONE IN THIS STATE FOR TAXABLE CAPITAL. (a) In apportioning
 11-53 taxable capital, the gross receipts of a taxable entity
 11-54 [~~corporation~~] from its business done in this state is the sum of the
 11-55 taxable entity's [~~corporation's~~] receipts from:

11-56 (1) each sale of tangible personal property if the
 11-57 property is delivered or shipped to a buyer in this state regardless
 11-58 of the FOB point or another condition of the sale[, and each sale of
 11-59 ~~tangible personal property shipped from this state to a purchaser~~
 11-60 ~~in another state in which the seller is not subject to taxation];~~

11-61 (2) each service performed in this state;

11-62 (3) each rental of property situated in this state;

11-63 (4) the use of a patent, copyright, trademark,
 11-64 franchise, or license in this state;

11-65 (5) each sale of real property located in this state,
 11-66 including royalties from oil, gas, or other mineral interests; and

11-67 (6) other business done in this state.

11-68 (b) If related parties which are wholly owned subsidiaries
 11-69 of the same ultimate parent have collectively as of May 1, 2005,

12-1 made an investment of at least \$100 million in a new manufacturing
 12-2 capital improvement project located in this state for which the
 12-3 total capital investment for real and personal property will be in
 12-4 excess of \$400 million and tangible personal property is sold from
 12-5 one related party to another and ultimately resold to an unrelated
 12-6 party in the normal course of business in the form or condition in
 12-7 which it is acquired or as an attachment to other tangible personal
 12-8 property, then the buyer or purchaser for purposes of Subsection
 12-9 (a)(1) is deemed to be the first unrelated purchaser to whom the
 12-10 tangible personal property is resold.

12-11 SECTION 2E.09. Section 171.1032, Tax Code, is amended to
 12-12 read as follows:

12-13 Sec. 171.1032. DETERMINATION OF GROSS RECEIPTS FROM
 12-14 BUSINESS DONE IN THIS STATE FOR TAXABLE EARNED SURPLUS. (a) Except
 12-15 for the gross receipts of a taxable entity [~~corporation~~] that are
 12-16 subject to the provisions of Section 171.1061, in apportioning
 12-17 taxable earned surplus, the gross receipts of a taxable entity
 12-18 [~~corporation~~] from its business done in this state is the sum of the
 12-19 taxable entity's [~~corporation's~~] receipts from:

12-20 (1) each sale of tangible personal property if the
 12-21 property is delivered or shipped to a buyer in this state regardless
 12-22 of the FOB point or another condition of the sale[, ~~and each sale of~~
 12-23 ~~tangible personal property shipped from this state to a purchaser~~
 12-24 ~~in another state in which the seller is not subject to any tax on, or~~
 12-25 ~~measured by, net income, without regard to whether the tax is~~
 12-26 ~~imposed~~];

12-27 (2) each service performed in this state;

12-28 (3) each rental of property situated in this state;

12-29 (4) the use of a patent, copyright, trademark,
 12-30 franchise, or license in this state;

12-31 (5) each sale of real property located in this state,
 12-32 including royalties from oil, gas, or other mineral interests;

12-33 (6) each partnership or joint venture to the extent
 12-34 provided by Subsection (c); and

12-35 (7) other business done in this state.

12-36 (b) A taxable entity [~~corporation~~] shall deduct from its
 12-37 gross receipts computed under Subsection (a) any amount to the
 12-38 extent included under Subsection (a) because of the application of
 12-39 Section 78 or Sections 951-964, Internal Revenue Code, any amount
 12-40 excludable under Section 171.110(k), and dividends received from a
 12-41 subsidiary, associate, or affiliated entity [~~corporation~~] that
 12-42 does not transact a substantial portion of its business or
 12-43 regularly maintain a substantial portion of its assets in the
 12-44 United States.

12-45 [~~(c) A corporation shall include in its gross receipts~~
 12-46 ~~computed under Subsection (a) the corporation's share of the gross~~
 12-47 ~~receipts of each partnership and joint venture of which the~~
 12-48 ~~corporation is a part apportioned to this state as though the~~
 12-49 ~~corporation directly earned the receipts, including receipts from~~
 12-50 ~~business done with the corporation.]~~

12-51 (d) If related parties which are wholly owned subsidiaries
 12-52 of the same ultimate parent have collectively as of May 1, 2005,
 12-53 made an investment of at least \$100 million in a new manufacturing
 12-54 capital improvement project located in this state for which the
 12-55 total capital investment is budgeted to be in excess of \$400 million
 12-56 and tangible personal property is sold from one related party to
 12-57 another and ultimately resold to an unrelated party in the normal
 12-58 course of business in the form or condition in which it is acquired
 12-59 or as an attachment to other tangible personal property, then the
 12-60 buyer or purchaser for purposes of Subsection (a)(1) is deemed to be
 12-61 the first unrelated purchaser to whom the tangible personal
 12-62 property is resold.

12-63 SECTION 2E.10. Section 171.104, Tax Code, is amended to
 12-64 read as follows:

12-65 Sec. 171.104. GROSS RECEIPTS FROM BUSINESS DONE IN TEXAS:
 12-66 DEDUCTION FOR FOOD AND MEDICINE RECEIPTS. A taxable entity
 12-67 [~~corporation~~] may deduct from its receipts includable under Section
 12-68 171.103(a)(1) [~~171.103(1) of this code~~] the amount of the taxable
 12-69 entity's [~~corporation's~~] receipts from sales of the following

13-1 items, if the items are shipped from outside this state and the
 13-2 receipts would be includable under Section 171.103(a)(1)
 13-3 [~~171.103(1) of this code~~] in the absence of this section:

- 13-4 (1) food that is exempted from the Limited Sales,
 13-5 Excise, and Use Tax Act by Section 151.314(a) [~~of this code~~]; and
 13-6 (2) health care supplies that are exempted from the
 13-7 Limited Sales, Excise, and Use Tax Act by Section 151.313 [~~of this~~
 13-8 ~~code~~].

13-9 SECTION 2E.11. Section 171.105, Tax Code, is amended to
 13-10 read as follows:

13-11 Sec. 171.105. DETERMINATION OF GROSS RECEIPTS FROM ENTIRE
 13-12 BUSINESS FOR TAXABLE CAPITAL. (a) In apportioning taxable
 13-13 capital, the gross receipts of a taxable entity [~~corporation~~] from
 13-14 its entire business is the sum of the taxable entity's
 13-15 [~~corporation's~~] receipts from:

- 13-16 (1) each sale of the taxable entity's [~~corporation's~~]
 13-17 tangible personal property;
 13-18 (2) each service, rental, or royalty; and
 13-19 (3) other business.

13-20 (b) If a taxable entity [~~corporation~~] sells an investment or
 13-21 capital asset, the taxable entity's [~~corporation's~~] gross receipts
 13-22 from its entire business for taxable capital include only the net
 13-23 gain from the sale.

13-24 SECTION 2E.12. Section 171.1051, Tax Code, is amended to
 13-25 read as follows:

13-26 Sec. 171.1051. DETERMINATION OF GROSS RECEIPTS FROM ENTIRE
 13-27 BUSINESS FOR TAXABLE EARNED SURPLUS. (a) Except for the gross
 13-28 receipts of a taxable entity [~~corporation~~] that are subject to the
 13-29 provisions of Section 171.1061, in apportioning taxable earned
 13-30 surplus, the gross receipts of a taxable entity [~~corporation~~] from
 13-31 its entire business is the sum of the taxable entity's
 13-32 [~~corporation's~~] receipts from:

- 13-33 (1) each sale of the taxable entity's [~~corporation's~~]
 13-34 tangible personal property;
 13-35 (2) each service, rental, or royalty;
 13-36 (3) each partnership and joint venture as provided by
 13-37 Subsection (d); and
 13-38 (4) other business.

13-39 (b) If a taxable entity [~~corporation~~] sells an investment or
 13-40 capital asset, the taxable entity's [~~corporation's~~] gross receipts
 13-41 from its entire business for taxable earned surplus includes only
 13-42 the net gain from the sale.

13-43 (c) A taxable entity [~~corporation~~] shall deduct from its
 13-44 gross receipts computed under Subsection (a) any amount to the
 13-45 extent included in Subsection (a) because of the application of
 13-46 Section 78 or Sections 951-964, Internal Revenue Code, any amount
 13-47 excludable under Section 171.110(k), and dividends received from a
 13-48 subsidiary, associate, or affiliated entity [~~corporation~~] that
 13-49 does not transact a substantial portion of its business or
 13-50 regularly maintain a substantial portion of its assets in the
 13-51 United States.

13-52 [~~(d) A corporation shall include in its gross receipts~~
 13-53 ~~computed under Subsection (a) the corporation's share of the gross~~
 13-54 ~~receipts of each partnership and joint venture of which the~~
 13-55 ~~corporation is a part.]~~

13-56 SECTION 2E.13. Sections 171.106(a)-(d), Tax Code, are
 13-57 amended to read as follows:

13-58 (a) Except as provided by Subsections (c) and (d), a taxable
 13-59 entity's [~~corporation's~~] taxable capital is apportioned to this
 13-60 state to determine the amount of the tax imposed under Section
 13-61 171.002(b)(1) by multiplying the taxable entity's [~~corporation's~~]
 13-62 taxable capital by a fraction, the numerator of which is the taxable
 13-63 entity's [~~corporation's~~] gross receipts from business done in this
 13-64 state, as determined under Section 171.103, and the denominator of
 13-65 which is the taxable entity's [~~corporation's~~] gross receipts from
 13-66 its entire business, as determined under Section 171.105.

13-67 (b) Except as provided by Subsections (c) and (d), a taxable
 13-68 entity's [~~corporation's~~] taxable earned surplus is apportioned to
 13-69 this state to determine the amount of tax imposed under Section

14-1 171.002(b)(2) by multiplying the taxable earned surplus by a
 14-2 fraction, the numerator of which is the taxable entity's
 14-3 [~~corporation's~~] gross receipts from business done in this state, as
 14-4 determined under Section 171.1032, and the denominator of which is
 14-5 the taxable entity's [~~corporation's~~] gross receipts from its entire
 14-6 business, as determined under Section 171.1051.

14-7 (c) A taxable entity's [~~corporation's~~] taxable capital or
 14-8 earned surplus that is derived, directly or indirectly, from the
 14-9 sale of management, distribution, or administration services to or
 14-10 on behalf of a regulated investment company, including a taxable
 14-11 entity [~~corporation~~] that includes trustees or sponsors of employee
 14-12 benefit plans that have accounts in a regulated investment company,
 14-13 is apportioned to this state to determine the amount of the tax
 14-14 imposed under Section 171.002 by multiplying the taxable entity's
 14-15 [~~corporation's~~] total taxable capital or earned surplus from the
 14-16 sale of services to or on behalf of a regulated investment company
 14-17 by a fraction, the numerator of which is the average of the sum of
 14-18 shares owned at the beginning of the year and the sum of shares
 14-19 owned at the end of the year by the investment company shareholders
 14-20 who are commercially domiciled in this state or, if the
 14-21 shareholders are individuals, are residents of this state, and the
 14-22 denominator of which is the average of the sum of shares owned at
 14-23 the beginning of the year and the sum of shares owned at the end of
 14-24 the year by all investment company shareholders. The taxable
 14-25 entity [~~corporation~~] shall make a separate computation to allocate
 14-26 taxable capital and earned surplus. In this subsection, "regulated
 14-27 investment company" has the meaning assigned by Section 851(a),
 14-28 Internal Revenue Code.

14-29 (d) A taxable entity's [~~corporation's~~] taxable capital or
 14-30 taxable earned surplus that is derived, directly or indirectly,
 14-31 from the sale of management, administration, or investment services
 14-32 to an employee retirement plan is apportioned to this state to
 14-33 determine the amount of the tax imposed under Section 171.002 by
 14-34 multiplying the taxable entity's [~~corporation's~~] total taxable
 14-35 capital or earned surplus from the sale of services to an employee
 14-36 retirement plan company by a fraction, the numerator of which is the
 14-37 average of the sum of beneficiaries domiciled in Texas at the
 14-38 beginning of the year and the sum of beneficiaries domiciled in
 14-39 Texas at the end of the year, and the denominator of which is the
 14-40 average of the sum of all beneficiaries at the beginning of the year
 14-41 and the sum of all beneficiaries at the end of the year. The taxable
 14-42 entity [~~corporation~~] shall make a separate computation to apportion
 14-43 taxable capital and earned surplus. In this section, "employee
 14-44 retirement plan" means a plan or other arrangement that is
 14-45 qualified under Section 401(a), Internal Revenue Code, or satisfies
 14-46 the requirements of Section 403, Internal Revenue Code, or a
 14-47 government plan described in Section 414(d), Internal Revenue Code.
 14-48 The term does not include an individual retirement account or
 14-49 individual retirement annuity within the meaning of Section 408,
 14-50 Internal Revenue Code.

14-51 SECTION 2E.14. Section 171.1061, Tax Code, is amended to
 14-52 read as follows:

14-53 Sec. 171.1061. ALLOCATION OF CERTAIN TAXABLE EARNED SURPLUS
 14-54 TO THIS STATE. An item of income included in a taxable entity's
 14-55 [~~corporation's~~] taxable earned surplus, except that portion
 14-56 derived from dividends and interest, that a state, other than this
 14-57 state, or a country, other than the United States, cannot tax
 14-58 because the activities generating that item of income do not have
 14-59 sufficient unitary connection with the taxable entity's
 14-60 [~~corporation's~~] other activities conducted within that state or
 14-61 country under the United States Constitution, is allocated to this
 14-62 state if the taxable entity's [~~corporation's~~] commercial domicile
 14-63 is in this state. Income that can only be allocated to the state of
 14-64 commercial domicile because the income has insufficient unitary
 14-65 connection with any other state or country shall be allocated to
 14-66 this state or another state or country net of expenses related to
 14-67 that income. A portion of a taxable entity's [~~corporation's~~]
 14-68 taxable earned surplus allocated to this state under this section
 14-69 may not be apportioned under Section 171.110(a)(2).

15-1 SECTION 2E.15. Sections 171.107(b), (d), and (e), Tax Code,
15-2 are amended to read as follows:

15-3 (b) A taxable entity [~~corporation~~] may deduct from its
15-4 apportioned taxable capital the amortized cost of a solar energy
15-5 device or from its apportioned taxable earned surplus 10 percent of
15-6 the amortized cost of a solar energy device if:

15-7 (1) the device is acquired by the taxable entity
15-8 [~~corporation~~] for heating or cooling or for the production of
15-9 power;

15-10 (2) the device is used in this state by the taxable
15-11 entity [~~corporation~~]; and

15-12 (3) the cost of the device is amortized in accordance
15-13 with Subsection (c) [~~of this section~~].

15-14 (d) A taxable entity [~~corporation~~] that makes a deduction
15-15 under this section shall file with the comptroller an amortization
15-16 schedule showing the period in which a deduction is to be made. On
15-17 the request of the comptroller, the taxable entity [~~corporation~~]
15-18 shall file with the comptroller proof of the cost of the solar
15-19 energy device or proof of the device's operation in this state.

15-20 (e) A taxable entity [~~corporation~~] may elect to make the
15-21 deduction authorized by this section either from apportioned
15-22 taxable capital or apportioned taxable earned surplus for each
15-23 separate regular annual period. An election for an initial period
15-24 applies to the second tax period and to the first regular annual
15-25 period.

15-26 SECTION 2E.16. Sections 171.108(b), (d), and (e), Tax Code,
15-27 as added by Section 4, H.B. No. 2201, Acts of the 79th Legislature,
15-28 Regular Session, 2005, are amended to read as follows:

15-29 (b) A taxable entity [~~corporation~~] may deduct from its
15-30 apportioned taxable capital the amortized cost of equipment or from
15-31 its apportioned taxable earned surplus 10 percent of the amortized
15-32 cost of equipment:

15-33 (1) that is used in a clean coal project;

15-34 (2) that is acquired by the taxable entity
15-35 [~~corporation~~] for use in generation of electricity, production of
15-36 process steam, or industrial production;

15-37 (3) that the taxable entity [~~corporation~~] uses in this
15-38 state; and

15-39 (4) the cost of which is amortized in accordance with
15-40 Subsection (c).

15-41 (d) A taxable entity [~~corporation~~] that makes a deduction
15-42 under this section shall file with the comptroller an amortization
15-43 schedule showing the period for which the deduction is to be made.
15-44 On the request of the comptroller, the taxable entity [~~corporation~~]
15-45 shall file with the comptroller proof of the cost of the equipment
15-46 or proof of the equipment's operation in this state.

15-47 (e) A taxable entity [~~corporation~~] may elect to make the
15-48 deduction authorized by this section from apportioned taxable
15-49 capital or apportioned taxable earned surplus, but not from both,
15-50 for each separate regular annual period. An election for an initial
15-51 period applies to the second tax period and to the first regular
15-52 annual period.

15-53 SECTION 2E.17. Section 171.109, Tax Code, is amended by
15-54 amending Subsections (a), (b)-(f), (h), (j), (k), (m), and (n), by
15-55 reenacting and amending Subsection (g), as amended by Chapters 801
15-56 and 1198, Acts of the 71st Legislature, Regular Session, 1989, and
15-57 by adding Subsections (a-2) and (o) to read as follows:

15-58 (a) In this chapter:

15-59 (1) "Surplus" or "taxable capital" means the net
15-60 assets of a taxable entity [~~corporation minus its stated capital.~~
15-61 ~~For a limited liability company, "surplus" means the net assets of~~
15-62 ~~the company minus its members' contributions~~]. Surplus includes
15-63 unrealized, estimated, or contingent losses or obligations or any
15-64 writedown of assets other than those listed in Subsection (i) [~~of~~
15-65 ~~this section~~] net of appropriate income tax provisions. The
15-66 definition under this subdivision does not apply to earned surplus.

15-67 (2) "Net assets" means the total assets of a taxable
15-68 entity [~~corporation~~] minus its total debts.

15-69 (3) "Debt" means any legally enforceable obligation

16-1 measured in a certain amount of money which must be performed or
 16-2 paid within an ascertainable period of time or on demand.

16-3 (a-2) In this section, "distribution" includes a dividend.

16-4 (b) Except as otherwise provided in this section, a taxable
 16-5 entity [~~corporation~~] must compute its surplus, assets, and debts
 16-6 according to generally accepted accounting principles. If
 16-7 generally accepted accounting principles are unsettled or do not
 16-8 specify an accounting practice for a particular purpose related to
 16-9 the computation of surplus, assets, or debts, the comptroller by
 16-10 rule may establish rules to specify the applicable accounting
 16-11 practice for that purpose.

16-12 (c) A taxable entity [~~corporation~~] whose taxable capital is
 16-13 less than \$1 million may report its surplus according to the method
 16-14 used in the taxable entity's [~~corporation's~~] most recent federal
 16-15 income tax return originally due on or before the date on which the
 16-16 taxable entity's [~~corporation's~~] franchise tax report is originally
 16-17 due. In determining if taxable capital is less than \$1 million, the
 16-18 taxable entity [~~corporation~~] shall apply the methods the taxable
 16-19 entity [~~corporation~~] used in computing that federal income tax
 16-20 return unless another method is required under this chapter.

16-21 (d) A taxable entity [~~corporation~~] shall report its surplus
 16-22 based solely on its own financial condition. Consolidated
 16-23 reporting of surplus is prohibited.

16-24 (e) A taxable entity [~~Unless the provisions of Section~~
 16-25 ~~171.111 apply due to an election under that section, a corporation~~]
 16-26 may not change the accounting methods used to compute its surplus
 16-27 more often than once every four years without the written consent of
 16-28 the comptroller. A change in accounting methods is not justified
 16-29 solely because it results in a reduction of tax liability.

16-30 (f) A taxable entity making a distribution [~~corporation~~
 16-31 ~~declaring dividends~~] shall exclude the distribution [~~those~~
 16-32 ~~dividends~~] from its taxable capital, and a taxable entity
 16-33 [~~corporation~~] receiving a distribution [~~dividends~~] shall include
 16-34 the distribution [~~those dividends~~] in its gross receipts and
 16-35 taxable capital as of the earlier of:

16-36 (1) the date the distribution is [~~dividends are~~]
 16-37 declared, if the distribution is [~~dividends are~~] actually paid in
 16-38 cash or property other than a note payable within one year after the
 16-39 declaration date; or

16-40 (2) the date the distribution is [~~dividends are~~]
 16-41 actually paid in cash or property other than a note payable.

16-42 (g) All oil and gas exploration and production activities
 16-43 conducted by a taxable entity [~~corporation~~] that reports its
 16-44 surplus according to generally accepted accounting principles as
 16-45 required or permitted by this chapter must be reported according to
 16-46 the successful efforts or the full cost method of accounting.

16-47 (h) A parent or investor taxable entity [~~corporation~~] must
 16-48 use the cost method of accounting in reporting and calculating the
 16-49 franchise tax on its investments in subsidiary taxable entities
 16-50 [~~corporations~~] or other investees. The retained earnings of a
 16-51 subsidiary taxable entity [~~corporation~~] or other investee before
 16-52 acquisition by the parent or investor taxable entity [~~corporation~~]
 16-53 may not be excluded from the cost of the subsidiary taxable entity
 16-54 [~~corporation~~] or investee to the parent or investor taxable entity
 16-55 [~~corporation~~] and must be included by the parent or investor
 16-56 taxable entity [~~corporation~~] in calculating its surplus.

16-57 (j) A taxable entity [~~corporation~~] may not exclude from
 16-58 surplus:

16-59 (1) liabilities for compensation and other benefits
 16-60 provided to employees, other than wages, that are not debt as of the
 16-61 end of the accounting period on which the taxable capital component
 16-62 is based, including retirement, medical, insurance,
 16-63 postretirement, and other similar benefits; and

16-64 (2) deferred investment tax credits.

16-65 (k) Notwithstanding any other provision in this chapter, a
 16-66 taxable entity [~~corporation~~] subject to the tax imposed by this
 16-67 chapter shall use double entry bookkeeping to account for all
 16-68 transactions that affect the computation of that tax.

16-69 (m) A taxable entity [~~corporation~~] may not use the push-down

17-1 method of accounting in computing or reporting its surplus.

17-2 (n) A taxable entity [~~corporation~~] must use the equity
17-3 method of accounting when reporting an investment in an entity that
17-4 is not a taxable entity [~~a partnership or joint venture~~].

17-5 (o) Notwithstanding any other subsection in this section,
17-6 there shall be excluded from the taxable capital of a parent or
17-7 investor taxable entity the direct or indirect investment by that
17-8 parent or investor taxable entity in the capital of one or more
17-9 other taxable entities in which that parent or investor taxable
17-10 entity has a "controlling interest" as that term is defined in
17-11 Section 171.1001.

17-12 SECTION 2E.18. Section 171.110, Tax Code, is amended to
17-13 read as follows:

17-14 Sec. 171.110. DETERMINATION OF NET TAXABLE EARNED SURPLUS.

17-15 (a) The net taxable earned surplus of a taxable entity
17-16 [~~corporation~~] is computed by:

17-17 (1) determining the taxable entity's [~~corporation's~~]
17-18 reportable federal taxable income and making the following
17-19 adjustments:

17-20 (A) for a corporation, subtracting [~~from that~~
17-21 ~~amount~~] any amount excludable under Subsection (k) and [~~7~~] any
17-22 amount included in reportable federal taxable income under Section
17-23 78 or Sections 951-964, Internal Revenue Code;

17-24 (B) for a corporation, subtracting [~~7~~ ~~and~~]
17-25 dividends received from a subsidiary, associate, or affiliated
17-26 taxable entity [~~corporation~~] that does not transact a substantial
17-27 portion of its business or regularly maintain a substantial portion
17-28 of its assets in the United States;

17-29 (C) adding compensation as described by
17-30 Subsection (m); and

17-31 (D) subtracting the lesser of:
17-32 (i) 90 percent of compensation as described
17-33 by Subsection (m); or

17-34 (ii) \$30,000 for each full-time employee
17-35 and a fractional amount of \$30,000 for each part-time employee
17-36 proportionate to the extent of the part-time employee's employment
17-37 under rules the comptroller shall develop and adopt [~~7~~ ~~and adding to~~
17-38 ~~that amount any compensation of officers or directors, or if a bank,~~
17-39 ~~any compensation of directors and executive officers, to the extent~~
17-40 ~~excluded in determining federal taxable income to determine the~~
17-41 ~~corporation's taxable earned surplus];~~

17-42 (2) apportioning the taxable entity's [~~corporation's~~]
17-43 taxable earned surplus to this state as provided by Section
17-44 171.106(b) or (c), as applicable, to determine the taxable entity's
17-45 [corporation's] apportioned taxable earned surplus;

17-46 (3) adding the taxable entity's [~~corporation's~~]
17-47 taxable earned surplus allocated to this state as provided by
17-48 Section 171.1061; and

17-49 (4) subtracting from that amount any allowable
17-50 deductions and any business loss that is carried forward to the tax
17-51 reporting period and deductible under Subsection (e).

17-52 [~~(b) Except as provided by Subsection (c), a corporation is~~
17-53 ~~not required to add the compensation of officers or directors as~~
17-54 ~~required by Subsection (a)(1) if the corporation is:~~

17-55 (1) ~~a corporation that has not more than 35~~
17-56 ~~shareholders; or~~

17-57 (2) ~~an S corporation, as that term is defined by~~
17-58 ~~Section 1361, Internal Revenue Code.~~

17-59 [~~(c) A subsidiary corporation may not claim the exclusion~~
17-60 ~~under Subsection (b) if it has a parent corporation that does not~~
17-61 ~~qualify for the exclusion. For purposes of this subsection, a~~
17-62 ~~corporation qualifies as a parent if it ultimately controls the~~
17-63 ~~subsidiary, even if the control arises through a series or group of~~
17-64 ~~other subsidiaries or entities. Control is presumed if a parent~~
17-65 ~~corporation directly or indirectly owns, controls, or holds a~~
17-66 ~~majority of the outstanding voting stock of a corporation or~~
17-67 ~~ownership interests in another entity.]~~

17-68 (d) A corporation's reportable federal taxable income is
17-69 the corporation's federal taxable income under Subsection (a)(1)

18-1 after Schedule C special deductions and before net operating loss
 18-2 deductions as computed under the Internal Revenue Code, except that
 18-3 an S corporation's reportable federal taxable income is the amount
 18-4 of the income reportable to the Internal Revenue Service as taxable
 18-5 to the corporation's shareholders. Reportable federal taxable
 18-6 income for a partnership is the partnership's income as an entity as
 18-7 determined under rules adopted by the comptroller using principles
 18-8 similar to the standards applied to a corporation. Reportable
 18-9 federal taxable income for an entity other than a corporation or
 18-10 partnership is determined under rules adopted by the comptroller
 18-11 using principles similar to the standards applied to a corporation.

18-12 (d-1) A real estate investment trust may, in determining its
 18-13 reportable federal taxable income for the purpose of this section,
 18-14 deduct dividends paid to shareholders. In this subsection, a real
 18-15 estate investment trust is an entity that complies with Sections
 18-16 856-860, Internal Revenue Code.

18-17 (e) For purposes of this section, a business loss is any
 18-18 negative amount of earned surplus after apportionment and
 18-19 allocation. The business loss shall be carried forward to the year
 18-20 succeeding the loss year as a deduction to net taxable earned
 18-21 surplus, then successively to the succeeding four taxable years
 18-22 after the loss year or until the loss is exhausted, whichever occurs
 18-23 first, but for not more than five taxable years after the loss year.
 18-24 Notwithstanding the preceding sentence, a business loss from a tax
 18-25 year that ends before January 1, 1991, may not be used to reduce net
 18-26 taxable earned surplus. A business loss can be carried forward only
 18-27 by the taxable entity [~~corporation~~] that incurred the loss and
 18-28 cannot be transferred to or claimed by any other entity, including
 18-29 the survivor of a merger if the loss was incurred by the taxable
 18-30 entity [~~corporation~~] that did not survive the merger.

18-31 (f) A taxable entity [~~corporation~~] may use either the "first
 18-32 in-first out" or "last in-first out" method of accounting to
 18-33 compute its net taxable earned surplus, but only to the extent that
 18-34 the taxable entity [~~corporation~~] used that method on its most
 18-35 recent federal income tax report originally due on or before the
 18-36 date on which the taxable entity's [~~corporation's~~] franchise tax
 18-37 report is originally due.

18-38 [~~(g) For purposes of this section, an approved Employee~~
 18-39 ~~Stock Ownership Plan controlling a minority interest and voted~~
 18-40 ~~through a single trustee shall be considered one shareholder.]~~

18-41 (h) A taxable entity [~~corporation~~] shall report its net
 18-42 taxable earned surplus based solely on its own financial condition.
 18-43 Consolidated reporting is prohibited.

18-44 [~~(i) For purposes of this section, any person designated as~~
 18-45 ~~an officer is presumed to be an officer if that person:~~

18-46 [~~(1) holds an office created by the board of directors~~
 18-47 ~~or under the corporate charter or bylaws; and~~

18-48 [~~(2) has legal authority to bind the corporation with~~
 18-49 ~~third parties by executing contracts or other legal documents.~~

18-50 [~~(j) A corporation may rebut the presumption described in~~
 18-51 ~~Subsection (i) that a person is an officer if it conclusively shows,~~
 18-52 ~~through the person's job description or other documentation, that~~
 18-53 ~~the person does not participate or have authority to participate in~~
 18-54 ~~significant policy making aspects of the corporate operations.]~~

18-55 (k) Dividends and interest received from federal
 18-56 obligations are not included in earned surplus or gross receipts
 18-57 for earned surplus purposes.

18-58 (l) In this section:

18-59 (1) "Federal obligations" means:

18-60 (A) stocks and other direct obligations of, and
 18-61 obligations unconditionally guaranteed by, the United States
 18-62 government and United States government agencies; and

18-63 (B) direct obligations of a United States
 18-64 government-sponsored agency.

18-65 (2) "Obligation" means any bond, debenture, security,
 18-66 mortgage-backed security, pass-through certificate, or other
 18-67 evidence of indebtedness of the issuing entity. The term does not
 18-68 include a deposit, a repurchase agreement, a loan, a lease, a
 18-69 participation in a loan or pool of loans, a loan collateralized by

19-1 an obligation of a United States government agency, or a loan
19-2 guaranteed by a United States government agency.

19-3 (3) "United States government" means any department or
19-4 ministry of the federal government, including a federal reserve
19-5 bank. The term does not include a state or local government, a
19-6 commercial enterprise owned wholly or partly by the United States
19-7 government, or a local governmental entity or commercial enterprise
19-8 whose obligations are guaranteed by the United States government.

19-9 (4) "United States government agency" means an
19-10 instrumentality of the United States government whose obligations
19-11 are fully and explicitly guaranteed as to the timely payment of
19-12 principal and interest by the full faith and credit of the United
19-13 States government. The term includes the Government National
19-14 Mortgage Association, the Department of Veterans Affairs, the
19-15 Federal Housing Administration, the Farmers Home Administration,
19-16 the Export-Import Bank, the Overseas Private Investment
19-17 Corporation, the Commodity Credit Corporation, the Small Business
19-18 Administration, and any successor agency.

19-19 (5) "United States government-sponsored agency" means
19-20 an agency originally established or chartered by the United States
19-21 government to serve public purposes specified by the United States
19-22 Congress but whose obligations are not explicitly guaranteed by the
19-23 full faith and credit of the United States government. The term
19-24 includes the Federal Home Loan Mortgage Corporation, the Federal
19-25 National Mortgage Association, the Farm Credit System, the Federal
19-26 Home Loan Bank System, the Student Loan Marketing Association, and
19-27 any successor agency.

19-28 (m) For purposes of this section, compensation for a taxable
19-29 entity is the amount the taxable entity entered as total payments in
19-30 Part 1, line 1, of the federal Internal Revenue Service Form 940 or
19-31 940-EZ, Employer's Annual Federal Unemployment (FUTA) Tax Return,
19-32 and guaranteed payments to partners, during the period on which
19-33 earned surplus is based, except that:

19-34 (1) for a taxable entity that is a client company of a
19-35 staff leasing services company, compensation is the amount the
19-36 client company entered as total payments in Part 1, line 1, of Form
19-37 940 or 940-EZ, plus payments by the staff leasing services company
19-38 to assigned employees of the client company; and

19-39 (2) for a taxable entity that is a staff leasing
19-40 services company, compensation is the amount the staff leasing
19-41 services company entered as total payments in Part 1, line 1, of
19-42 Form 940 or 940-EZ, minus payments by the staff leasing services
19-43 company to assigned employees of a client company.

19-44 (n) For purposes of this section, the terms "assigned
19-45 employee," "client company," and "staff leasing services company"
19-46 have the meanings assigned by Section 91.001, Labor Code.

19-47 SECTION 2E.19. Sections 171.112(b)-(f) and (h), Tax Code,
19-48 are amended to read as follows:

19-49 (b) Except as otherwise provided in this section, a taxable
19-50 entity [~~corporation~~] must compute gross receipts in accordance with
19-51 generally accepted accounting principles. If generally accepted
19-52 accounting principles are unsettled or do not specify an accounting
19-53 practice for a particular purpose related to the computation of
19-54 gross receipts, the comptroller by rule may establish rules to
19-55 specify the applicable accounting practice.

19-56 (c) A taxable entity [~~corporation~~] whose taxable capital is
19-57 less than \$1 million may report its gross receipts according to the
19-58 method used in the taxable entity's [~~corporation's~~] most recent
19-59 federal income tax return originally due on or before the date on
19-60 which the taxable entity's [~~corporation's~~] franchise tax report is
19-61 originally due. In determining if taxable capital is less than \$1
19-62 million, the taxable entity [~~corporation~~] shall apply the methods
19-63 the taxable entity [~~corporation~~] used in computing that federal
19-64 income tax return unless another method is required under this
19-65 chapter.

19-66 (d) A taxable entity [~~corporation~~] shall report its gross
19-67 receipts based solely on its own financial condition. Consolidated
19-68 reporting is prohibited.

19-69 (e) Unless the provisions of Section 171.111 apply due to an

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

(f) 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.

(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 2E.20. Section 171.1121, Tax Code, is amended to read as follows:

Sec. 171.1121. GROSS RECEIPTS FOR TAXABLE EARNED SURPLUS.

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

(e) A corporation's share of a partnership's gross receipts that is included in the corporation's federal taxable income must be used in computing the corporation's gross receipts under this section. Unless otherwise provided by this chapter, a corporation may not deduct costs incurred from the corporation's share of a partnership's gross receipts. The gross receipts must be apportioned as though the corporation directly earned them.

SECTION 2E.21. Section 171.113, Tax Code, is amended to read as follows:

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

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

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

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

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

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

21-1 Sections 171.109 and 171.112 and other provisions of this chapter
21-2 to a taxable entity [~~corporation~~] making the election.

21-3 (c) The comptroller may adopt rules as necessary to specify
21-4 the reporting requirements for taxable entities [~~corporations~~] to
21-5 which this section applies.

21-6 (d) This section does not apply to a subsidiary of a taxable
21-7 entity [~~corporation~~] unless it applies to the parent [~~corporation~~]
21-8 of the subsidiary.

21-9 (e) The election under Subsection (b) becomes effective
21-10 when written notice of the election is received by the comptroller
21-11 from the taxable entity [~~corporation~~]. An election under
21-12 Subsection (b) must be postmarked not later than the due date for
21-13 the electing taxable entity's [~~corporation's~~] franchise tax report
21-14 to which the election applies.

21-15 SECTION 2E.22. Section 171.151, Tax Code, is amended to
21-16 read as follows:

21-17 Sec. 171.151. PRIVILEGE PERIOD COVERED BY TAX. The
21-18 franchise tax shall be paid for each of the following:

21-19 (1) an initial period beginning on the taxable
21-20 entity's [~~corporation's~~] beginning date and ending on the day
21-21 before the first anniversary of the beginning date;

21-22 (2) a second period beginning on the first anniversary
21-23 of the beginning date and ending on December 31 following that date;
21-24 and

21-25 (3) after the initial and second periods have expired,
21-26 a regular annual period beginning each year on January 1 and ending
21-27 the following December 31.

21-28 SECTION 2E.23. Section 171.152(c), Tax Code, is amended to
21-29 read as follows:

21-30 (c) Payment of the tax covering the regular annual period is
21-31 due May 15, of each year after the beginning of the regular annual
21-32 period. However, if the first anniversary of the taxable entity's
21-33 [~~corporation's~~] beginning date is after October 3 and before
21-34 January 1, the payment of the tax covering the first regular annual
21-35 period is due on the same date as the tax covering the initial
21-36 period.

21-37 SECTION 2E.24. Sections 171.153(a) and (c), Tax Code, are
21-38 amended to read as follows:

21-39 (a) The tax covering the initial period is reported on the
21-40 initial report and is based on the business done by the taxable
21-41 entity [~~corporation~~] during the period beginning on the taxable
21-42 entity's [~~corporation's~~] beginning date and:

21-43 (1) ending on the last accounting period ending date
21-44 that is at least six months after the beginning date and at least 60
21-45 days before the original due date of the initial report; or

21-46 (2) if there is no such period ending date in
21-47 Subdivision (1) [~~of this subsection~~], then ending on the day that is
21-48 the last day of a calendar month and that is nearest to the end of
21-49 the taxable entity's [~~corporation's~~] first year of business; or

21-50 (3) ending on the day after the merger occurs, for the
21-51 survivor of a merger which occurs after the day on which the tax is
21-52 based in Subdivision (1) or [~~Subdivision~~] (2), whichever is
21-53 applicable, [~~of Subsection (a)~~] and before January 1, of the year an
21-54 initial report is due by the survivor.

21-55 (c) The tax covering the regular annual period is based on
21-56 the business done by the taxable entity [~~corporation~~] during its
21-57 last accounting period that ends in the year before the year in
21-58 which the tax is due; unless a taxable entity [~~corporation~~] is the
21-59 survivor of a merger which occurs between the end of its last
21-60 accounting period in the year before the report year and January 1
21-61 of the report year, in which case the tax will be based on the
21-62 financial condition of the surviving taxable entity [~~corporation~~]
21-63 for the 12-month period ending on the day after the merger.
21-64 However, if the first anniversary of the taxable entity's
21-65 [~~corporation's~~] beginning date is after October 3 and before
21-66 January 1, the tax covering the first regular annual period is based
21-67 on the same business on which the tax covering the initial period is
21-68 based and is reported on the initial report.

21-69 SECTION 2E.25. Section 171.1532, Tax Code, is amended to

22-1 read as follows:

22-2 Sec. 171.1532. BUSINESS ON WHICH TAX ON NET TAXABLE EARNED
22-3 SURPLUS IS BASED. (a) The tax covering the privilege periods
22-4 included on the initial report, as required by Section 171.153, is
22-5 based on the business done by the taxable entity [~~corporation~~]
22-6 during the period beginning on the taxable entity's [~~corporation's~~]
22-7 beginning date and:

22-8 (1) ending on the last accounting period ending date
22-9 that is at least 60 days before the original due date of the initial
22-10 report; or

22-11 (2) if there is no such period ending date in
22-12 Subdivision (1) [~~of this subsection~~], then ending on the day that is
22-13 the last day of a calendar month and that is nearest to the end of
22-14 the taxable entity's [~~corporation's~~] first year of business.

22-15 (b) The tax covering the regular annual period, other than a
22-16 regular annual period included on the initial report, is based on
22-17 the business done by the taxable entity [~~corporation~~] during the
22-18 period beginning with the day after the last date upon which net
22-19 taxable earned surplus on a previous report was based and ending
22-20 with its last accounting period ending date for federal income tax
22-21 purposes in the year before the year in which the report is
22-22 originally due.

22-23 SECTION 2E.26. Section 171.154, Tax Code, is amended to
22-24 read as follows:

22-25 Sec. 171.154. PAYMENT TO COMPTROLLER. A taxable entity
22-26 [~~corporation~~] on which a tax is imposed by this chapter shall pay
22-27 the tax to the comptroller.

22-28 SECTION 2E.27. Section 171.201, Tax Code, is amended to
22-29 read as follows:

22-30 Sec. 171.201. INITIAL REPORT. (a) Except as provided by
22-31 Section 171.2022, a taxable entity [~~corporation~~] on which the
22-32 franchise tax is imposed shall file an initial report with the
22-33 comptroller containing:

22-34 (1) information showing the financial condition of the
22-35 taxable entity [~~corporation~~] on the day that is the last day of a
22-36 calendar month and that is nearest to the end of the taxable
22-37 entity's [~~corporation's~~] first year of business;

22-38 (2) the name and address of:
22-39 (A) each officer, [~~and~~] director, and manager of
22-40 the taxable entity [~~corporation~~];

22-41 (B) for a limited partnership, each general
22-42 partner;

22-43 (C) for a general partnership or limited
22-44 liability partnership, each managing partner or, if there is not a
22-45 managing partner, each partner; or

22-46 (D) for a trust, each trustee;

22-47 (3) the name and address of the agent of the taxable
22-48 entity [~~corporation~~] designated under Section 171.354; and

22-49 (4) other information required by the comptroller.

22-50 (b) The taxable entity [~~corporation~~] shall file the report
22-51 on or before the date the payment is due under Section 171.152(a)
22-52 [~~Subsection (a) of Section 171.152~~].

22-53 SECTION 2E.28. Sections 171.202(a)-(c), (e), (f), and (i),
22-54 Tax Code, are amended to read as follows:

22-55 (a) Except as provided by Section 171.2022, a taxable entity
22-56 [~~corporation~~] on which the franchise tax is imposed shall file an
22-57 annual report with the comptroller containing:

22-58 (1) financial and other information of the taxable
22-59 entity [~~corporation~~] necessary to compute the tax under this
22-60 chapter;

22-61 (2) the name and address of each officer and director
22-62 of the taxable entity [~~corporation~~];

22-63 (3) the name and address of the agent of the taxable
22-64 entity [~~corporation~~] designated under Section 171.354; and

22-65 (4) other information required by the comptroller.

22-66 (b) The taxable entity [~~corporation~~] shall file the report
22-67 before May 16 of each year after the beginning of the regular annual
22-68 period. The report shall be filed on forms supplied by the
22-69 comptroller.

23-1 (c) The comptroller shall grant an extension of time to a
 23-2 taxable entity [~~corporation~~] that is not required by rule to make
 23-3 its tax payments by electronic funds transfer for the filing of a
 23-4 report required by this section to any date on or before the next
 23-5 November 15, if a taxable entity [~~corporation~~]:

23-6 (1) requests the extension, on or before May 15, on a
 23-7 form provided by the comptroller; and

23-8 (2) remits with the request:
 23-9 (A) not less than 90 percent of the amount of tax
 23-10 reported as due on the report filed on or before November 15; or

23-11 (B) 100 percent of the tax reported as due for the
 23-12 previous calendar year on the report due in the previous calendar
 23-13 year and filed on or before May 14.

23-14 (e) The comptroller shall grant an extension of time for the
 23-15 filing of a report required by this section by a taxable entity
 23-16 [~~corporation~~] required by rule to make its tax payments by
 23-17 electronic funds transfer to any date on or before the next August
 23-18 15, if the taxable entity [~~corporation~~]:

23-19 (1) requests the extension, on or before May 15, on a
 23-20 form provided by the comptroller; and

23-21 (2) remits with the request:
 23-22 (A) not less than 90 percent of the amount of tax
 23-23 reported as due on the report filed on or before August 15; or

23-24 (B) 100 percent of the tax reported as due for the
 23-25 previous calendar year on the report due in the previous calendar
 23-26 year and filed on or before May 14.

23-27 (f) The comptroller shall grant an extension of time to a
 23-28 taxable entity [~~corporation~~] required by rule to make its tax
 23-29 payments by electronic funds transfer for the filing of a report due
 23-30 on or before August 15 to any date on or before the next November 15,
 23-31 if the taxable entity [~~corporation~~]:

23-32 (1) requests the extension, on or before August 15, on
 23-33 a form provided by the comptroller; and

23-34 (2) remits with the request the difference between the
 23-35 amount remitted under Subsection (e) and 100 percent of the amount
 23-36 of tax reported as due on the report filed on or before November 15.

23-37 (i) If a taxable entity [~~corporation~~] requesting an
 23-38 extension under Subsection (c) or (e) does not file the report due
 23-39 in the previous calendar year on or before May 14, the taxable
 23-40 entity [~~corporation~~] may not receive an extension under Subsection
 23-41 (c) or (e) unless the taxable entity [~~corporation~~] complies with
 23-42 Subsection (c)(2)(A) or (e)(2)(A), as appropriate.

23-43 SECTION 2E.29. Section 171.2022, Tax Code, is amended to
 23-44 read as follows:

23-45 Sec. 171.2022. EXEMPTION FROM REPORTING REQUIREMENTS. A
 23-46 taxable entity [~~corporation~~] that does not owe any tax under this
 23-47 chapter for any period is not required to file a report under
 23-48 Section 171.201 or [7] 171.202 [7, ~~or 171.2021~~]. The exemption
 23-49 applies only to a period for which no tax is due.

23-50 SECTION 2E.30. Section 171.204, Tax Code, is amended to
 23-51 read as follows:

23-52 Sec. 171.204. INFORMATION REPORT. (a) Except as provided
 23-53 by Subsection (b), to determine eligibility for the exemption
 23-54 provided by Section 171.2022, or to determine the amount of the
 23-55 franchise tax or the correctness of a franchise tax report, the
 23-56 comptroller may require [~~an officer of~~] a taxable entity
 23-57 [~~corporation~~] that may be subject to the tax imposed under this
 23-58 chapter to file an information report with the comptroller stating
 23-59 the amount of the taxable entity's [~~corporation's~~] taxable capital
 23-60 and earned surplus, or any other information the comptroller may
 23-61 request.

23-62 (b) The comptroller may require a taxable entity [~~an officer~~
 23-63 ~~of a corporation~~] that does not owe any tax because of the
 23-64 application of Section 171.002(d)(2) to file an abbreviated
 23-65 information report with the comptroller stating the amount of the
 23-66 taxable entity's [~~corporation's~~] gross receipts from its entire
 23-67 business. The comptroller may not require a taxable entity
 23-68 [~~corporation~~] described by this subsection to file an information
 23-69 report that requires the taxable entity [~~corporation~~] to report or

24-1 compute its earned surplus or taxable capital.

24-2 SECTION 2E.31. Section 171.205, Tax Code, is amended to
24-3 read as follows:

24-4 Sec. 171.205. ADDITIONAL INFORMATION REQUIRED BY
24-5 COMPTROLLER. The comptroller may require a taxable entity
24-6 [~~corporation~~] on which the franchise tax is imposed to furnish to
24-7 the comptroller information from the taxable entity's
24-8 [~~corporation's~~] books and records that has not been filed
24-9 previously and that is necessary for the comptroller to determine
24-10 the amount of the tax.

24-11 SECTION 2E.32. Section 171.206, Tax Code, is amended to
24-12 read as follows:

24-13 Sec. 171.206. CONFIDENTIAL INFORMATION. Except as provided
24-14 by Section 171.207 [~~of this code~~], the following information is
24-15 confidential and may not be made open to public inspection:

24-16 (1) information that is obtained from a record or
24-17 other instrument that is required by this chapter to be filed with
24-18 the comptroller; or

24-19 (2) information, including information about the
24-20 business affairs, operations, profits, losses, or expenditures of a
24-21 taxable entity [~~corporation~~], obtained by an examination of the
24-22 books and records, officers, partners, trustees, agents, or
24-23 employees of a taxable entity [~~corporation~~] on which a tax is
24-24 imposed by this chapter.

24-25 SECTION 2E.33. Section 171.208, Tax Code, is amended to
24-26 read as follows:

24-27 Sec. 171.208. PROHIBITION OF DISCLOSURE OF INFORMATION. A
24-28 person, including a state officer or employee or an owner [~~a~~
24-29 ~~shareholder~~] of a taxable entity [~~corporation~~], who has access to a
24-30 report filed under this chapter may not make known in a manner not
24-31 permitted by law the amount or source of the taxable entity's
24-32 [~~corporation's~~] income, profits, losses, expenditures, or other
24-33 information in the report relating to the financial condition of
24-34 the taxable entity [~~corporation~~].

24-35 SECTION 2E.34. Section 171.209, Tax Code, is amended to
24-36 read as follows:

24-37 Sec. 171.209. RIGHT OF OWNER [~~SHAREHOLDER~~] TO EXAMINE OR
24-38 RECEIVE REPORTS. If an owner [~~a person owning at least one share of~~
24-39 ~~outstanding stock~~] of a taxable entity [~~corporation~~] on whom the
24-40 franchise tax is imposed presents evidence of the ownership to the
24-41 comptroller, the person is entitled to examine or receive a copy of
24-42 an initial or annual report that is filed under Section 171.201 or
24-43 171.202 [~~of this code~~] and that relates to the taxable entity
24-44 [~~corporation~~].

24-45 SECTION 2E.35. Section 171.211, Tax Code, is amended to
24-46 read as follows:

24-47 Sec. 171.211. EXAMINATION OF [~~CORPORATE~~] RECORDS. To
24-48 determine the franchise tax liability of a taxable entity
24-49 [~~corporation~~], the comptroller may investigate or examine the
24-50 records of the taxable entity [~~corporation~~].

24-51 SECTION 2E.36. The heading to Subchapter F, Chapter 171,
24-52 Tax Code, is amended to read as follows:

24-53 SUBCHAPTER F. FORFEITURE OF CORPORATE
24-54 AND BUSINESS PRIVILEGES

24-55 SECTION 2E.37. Subchapter F, Chapter 171, Tax Code, is
24-56 amended by adding Section 171.2516 to read as follows:

24-57 Sec. 171.2516. FORFEITURE OF RIGHT OF PARTNERSHIP TO
24-58 TRANSACT BUSINESS IN THIS STATE. (a) The comptroller may, for the
24-59 same reasons and using the same procedures the comptroller uses in
24-60 relation to the forfeiture of the corporate privileges of a
24-61 corporation, forfeit the right of a partnership subject to a tax
24-62 imposed by this chapter to transact business in this state.

24-63 (b) The provisions of this subchapter, including Section
24-64 171.255, that apply to the forfeiture of corporate privileges apply
24-65 to the forfeiture of a partnership's right to transact business in
24-66 this state.

24-67 SECTION 2E.38. Section 171.351, Tax Code, is amended to
24-68 read as follows:

24-69 Sec. 171.351. VENUE OF SUIT TO ENFORCE CHAPTER. Venue of a

25-1 civil suit against a taxable entity [~~corporation~~] to enforce this
 25-2 chapter is either in a county where the taxable entity's
 25-3 [~~corporation's~~] principal office is located according to its
 25-4 charter or certificate of authority or in Travis County.

25-5 SECTION 2E.39. Section 171.353, Tax Code, is amended to
 25-6 read as follows:

25-7 Sec. 171.353. APPOINTMENT OF RECEIVER. If a court forfeits
 25-8 a taxable entity's [~~corporation's~~] charter or certificate of
 25-9 authority, the court may appoint a receiver for the taxable entity
 25-10 [~~corporation~~] and may administer the receivership under the laws
 25-11 relating to receiverships.

25-12 SECTION 2E.40. Section 171.354, Tax Code, is amended to
 25-13 read as follows:

25-14 Sec. 171.354. AGENT FOR SERVICE OF PROCESS. Each taxable
 25-15 entity [~~corporation~~] on which a tax is imposed by this chapter shall
 25-16 designate a resident of this state as the taxable entity's
 25-17 [~~corporation's~~] agent for the service of process.

25-18 SECTION 2E.41. Sections 171.362(a), (d), and (e), Tax Code,
 25-19 are amended to read as follows:

25-20 (a) If a taxable entity [~~corporation~~] on which a tax is
 25-21 imposed by this chapter fails to pay the tax when it is due and
 25-22 payable or fails to file a report required by this chapter when it
 25-23 is due, the taxable entity [~~corporation~~] is liable for a penalty of
 25-24 five percent of the amount of the tax due.

25-25 (d) If a taxable entity [~~corporation~~] electing to remit
 25-26 under [~~Paragraph (A) of Subdivision (2) of Subsection (c) of~~]
 25-27 Section 171.202(c)(2)(A) [~~171.202 of this code~~] remits less than
 25-28 the amount required, the penalties imposed by this section and the
 25-29 interest imposed under Section 111.060 [~~of this code~~] are assessed
 25-30 against the difference between the amount required to be remitted
 25-31 under [~~Paragraph (A) of Subdivision (2) of Subsection (c) of~~]
 25-32 Section 171.202(c)(2)(A) [~~171.202~~] and the amount actually
 25-33 remitted on or before May 15.

25-34 (e) If a taxable entity [~~corporation~~] remits the entire
 25-35 amount required by [~~Subsection (c) of~~] Section 171.202(c) [~~171.202~~
 25-36 ~~of this code~~], no penalties will be imposed against the amount
 25-37 remitted on or before November 15.

25-38 SECTION 2E.42. Sections 171.363(a) and (b), Tax Code, are
 25-39 amended to read as follows:

25-40 (a) A taxable entity [~~corporation~~] commits an offense if the
 25-41 taxable entity [~~corporation~~] is subject to the provisions of this
 25-42 chapter and the taxable entity [~~corporation~~] wilfully:

25-43 (1) fails to file a report;
 25-44 (2) fails to keep books and records as required by this
 25-45 chapter;

25-46 (3) files a fraudulent report;
 25-47 (4) violates any rule of the comptroller for the
 25-48 administration and enforcement of the provisions of this chapter;
 25-49 or

25-50 (5) attempts in any other manner to evade or defeat any
 25-51 tax imposed by this chapter or the payment of the tax.

25-52 (b) A person commits an offense if the person is an
 25-53 accountant or an agent for or an officer or employee of a taxable
 25-54 entity [~~corporation~~] and the person knowingly enters or provides
 25-55 false information on any report, return, or other document filed by
 25-56 the taxable entity [~~corporation~~] under this chapter.

25-57 SECTION 2E.43. Section 171.401, Tax Code, is amended to
 25-58 read as follows:

25-59 Sec. 171.401. REVENUE DEPOSITED IN FOUNDATION SCHOOL
 25-60 [~~GENERAL REVENUE~~] FUND. The revenue from the tax imposed by this
 25-61 chapter [~~on corporations~~] shall be deposited to the credit of the
 25-62 foundation school [~~general revenue~~] fund.

25-63 SECTION 2E.44. Chapter 171, Tax Code, is amended by adding
 25-64 Subchapter V to read as follows:

25-65 SUBCHAPTER V. TAX CREDIT FOR CERTAIN PHYSICIANS

25-66 Sec. 171.901. DEFINITION. In this subchapter, "physician"
 25-67 means:

25-68 (1) an individual licensed to practice medicine in
 25-69 this state;

26-1 (2) a professional association organized under the
 26-2 Texas Professional Association Act (Article 1528f, Vernon's Texas
 26-3 Civil Statutes);

26-4 (3) an approved nonprofit health corporation
 26-5 certified under Chapter 162, Occupations Code; or

26-6 (4) another person wholly owned by physicians and
 26-7 engaged in the practice of medicine as permitted by Subtitle B,
 26-8 Title 3, Occupations Code.

26-9 Sec. 171.902. QUALIFICATION. (a) A physician, dentist,
 26-10 optometrist, or podiatrist that participates in the Medicaid
 26-11 program or the Children's Health Insurance Program (CHIP) as a
 26-12 provider of health care services is entitled to a credit in the
 26-13 amount provided by Subsection (b) against the taxes imposed under
 26-14 this chapter for the period on which earned surplus is based.

26-15 (b) The amount of credit is equal to 20 percent of the total
 26-16 amount of payments the physician, dentist, optometrist, or
 26-17 podiatrist received from payments under the Medicaid or Children's
 26-18 Health Insurance Program (CHIP) during the period on which earned
 26-19 surplus is based that can be verified, if necessary.

26-20 Sec. 171.903. LIMITATIONS. A physician, dentist,
 26-21 optometrist, or podiatrist may not receive a credit in an amount
 26-22 that exceeds the amount of the tax or assessment due after applying
 26-23 any other credits.

26-24 Sec. 171.904. RULES. The comptroller shall adopt rules to
 26-25 implement this subchapter. The Health and Human Services
 26-26 Commission shall assist the comptroller in the formulation and
 26-27 adoption of the rules.

26-28 SECTION 2E.45. Chapter 171, Tax Code, is amended by adding
 26-29 Subchapter W to read as follows:

26-30 SUBCHAPTER W. APPLICATION OF REFUNDS AND CREDITS TO NONCORPORATE
 26-31 TAXABLE ENTITIES

26-32 Sec. 171.921. APPLICATION OF REFUNDS AND CREDITS TO
 26-33 NONCORPORATE TAXABLE ENTITIES. A taxable entity that is not a
 26-34 corporation but that, because of its activities, would qualify for
 26-35 a specific refund or credit under this chapter if it were a
 26-36 corporation qualifies for the refund or credit in the same manner
 26-37 and under the same conditions as a corporation.

26-38 SECTION 2E.46. The following provisions of the Tax Code are
 26-39 repealed:

- 26-40 (1) Section 113.001(c);
- 26-41 (2) Section 113.001(c-1);
- 26-42 (3) Sections 171.001(d-1), (e-1), and (f)-(g);
- 26-43 (4) Section 171.110(d-2);
- 26-44 (5) Section 171.110(d-3);
- 26-45 (6) Section 171.110(d-4);
- 26-46 (7) Section 171.1121(f);
- 26-47 (8) Section 171.213; and
- 26-48 (9) Section 171.2515.

26-49 SECTION 2E.47. If a credit under Chapter 171, Tax Code, as
 26-50 amended by this part, is found by a court in a final judgment upheld
 26-51 on appeal or no longer subject to appeal to be unconstitutional, the
 26-52 credit is disallowed for all entities on or after the date the final
 26-53 judgment was entered by the court and an entity is not entitled to
 26-54 and may not apply for the credit on or after that date for any
 26-55 reporting period beginning before, on, or after that date.

26-56 SECTION 2E.48. (a) This section applies to a suit brought
 26-57 by an entity subject to the tax under Chapter 171, Tax Code, as
 26-58 amended by this part, contending that the imposition of the tax on
 26-59 the entity is unconstitutional.

26-60 (b) The suit must be brought in a district court in Travis
 26-61 County.

26-62 (c) The judgment of the district court may be reviewed only
 26-63 by direct appeal to the supreme court filed on or before the 15th
 26-64 day after the date the district court enters its judgment. The
 26-65 district court shall try the suit and the supreme court shall hear
 26-66 any appeal relating to the suit as expeditiously as possible.

26-67 SECTION 2E.49. (a) Subject to other provisions of this
 26-68 section, this part applies to reports originally due on or after the
 26-69 effective date of this part.

27-1 (b) For an entity becoming subject to the franchise tax
 27-2 under this part:

27-3 (1) income or losses, and related gross receipts,
 27-4 occurring before January 1, 2006, may not be considered for
 27-5 purposes of the earned surplus component, or for apportionment
 27-6 purposes for the taxable capital component;

27-7 (2) an entity subject to the franchise tax on January
 27-8 1, 2007, for which January 1, 2007, is not the beginning date, shall
 27-9 file an annual report due May 15, 2007, based on the period:

27-10 (A) beginning on the later of:

27-11 (i) January 1, 2006; or

27-12 (ii) the date the entity was organized in
 27-13 this state or, if a foreign entity, the date it began doing business
 27-14 in this state; and

27-15 (B) ending on the date the entity's last
 27-16 accounting period ends in 2006 or, if none, on December 31, 2006;
 27-17 and

27-18 (3) an entity subject to the earned surplus component
 27-19 of the franchise tax at any time after January 1, 2006, and before
 27-20 January 1, 2007, but not subject to the earned surplus component on
 27-21 January 1, 2007, shall file a final report computed on net taxable
 27-22 earned surplus, for the privilege of doing business at any time
 27-23 after January 1, 2006, and before January 1, 2007, based on the
 27-24 period:

27-25 (A) beginning on the later of:

27-26 (i) January 1, 2006; or

27-27 (ii) the date the entity was organized in
 27-28 this state or, if a foreign entity, the date it began doing business
 27-29 in this state; and

27-30 (B) ending on the date the entity became no
 27-31 longer subject to the earned surplus component of the tax.

27-32 (c) For purposes of this part, an existing partnership is
 27-33 considered as continuing if it is not terminated.

27-34 (d) A partnership is considered terminated only if no part
 27-35 of any business, financial operation, or venture of the partnership
 27-36 continues to be carried on by any of its partners in a partnership.

27-37 (e) For a merger or consolidation of two or more
 27-38 partnerships, the resulting partnership is, for purposes of this
 27-39 part, considered the continuation of any merging or consolidating
 27-40 partnership whose members own an interest of more than 50 percent in
 27-41 the capital and profits of the resulting partnership.

27-42 (f) For a division of a partnership into two or more
 27-43 partnerships, the resulting partnerships, other than any resulting
 27-44 partnership the members of which had an interest of 50 percent or
 27-45 less in the capital and profits of the prior partnership, are, for
 27-46 purposes of this part, considered a continuation of the prior
 27-47 partnership.

27-48 ARTICLE 3. SALES AND USE TAXES

27-49 PART A. STATE SALES AND USE TAX

27-50 SECTION 3A.01. Section 151.0031, Tax Code, is amended to
 27-51 read as follows:

27-52 Sec. 151.0031. "COMPUTER PROGRAM." "Computer program"
 27-53 means a series of instructions that are coded for acceptance or use
 27-54 by a computer system and that are designed to permit the computer
 27-55 system to process data and provide results and information. The
 27-56 series of instructions may be contained in or on magnetic tapes,
 27-57 punched cards, printed instructions, or other tangible or
 27-58 electronic media. For purposes of this chapter, the term includes a
 27-59 computer program created or developed exclusively for a client who
 27-60 retains all rights to the program.

27-61 SECTION 3A.02. Section 151.051(b), Tax Code, is amended to
 27-62 read as follows:

27-63 (b) The sales tax rate is 6.75 [~~6-1/4~~] percent of the sales
 27-64 price of the taxable item sold.

27-65 SECTION 3A.03. Section 151.0101(a), Tax Code, is amended to
 27-66 read as follows:

27-67 (a) "Taxable services" means:

27-68 (1) amusement services;

27-69 (2) cable television services;

28-1 (3) personal services;
 28-2 (4) motor vehicle parking and storage services;
 28-3 (5) the repair, remodeling, maintenance, and
 28-4 restoration of tangible personal property, except:
 28-5 (A) aircraft;
 28-6 (B) a ship, boat, or other vessel, other than:
 28-7 (i) a taxable boat or motor as defined by
 28-8 Section 160.001;
 28-9 (ii) a sports fishing boat; or
 28-10 (iii) any other vessel used for pleasure;
 28-11 and
 28-12 (C) the repair, maintenance, and restoration of a
 28-13 motor vehicle; ~~and~~
 28-14 ~~[(D) the repair, maintenance, creation, and~~
 28-15 ~~restoration of a computer program, including its development and~~
 28-16 ~~modification, not sold by the person performing the repair,~~
 28-17 ~~maintenance, creation, or restoration service;]~~
 28-18 (6) telecommunications services;
 28-19 (7) credit reporting services;
 28-20 (8) debt collection services;
 28-21 (9) insurance services;
 28-22 (10) information services;
 28-23 (11) real property services;
 28-24 (12) data processing services;
 28-25 (13) real property repair and remodeling;
 28-26 (14) security services;
 28-27 (15) telephone answering services;
 28-28 (16) Internet access service; and
 28-29 (17) a sale by a transmission and distribution
 28-30 utility, as defined in Section 31.002, Utilities Code, of
 28-31 transmission or delivery of service directly to an electricity
 28-32 end-use customer whose consumption of electricity is subject to
 28-33 taxation under this chapter.

28-34 SECTION 3A.04. (a) Subchapter I, Chapter 151, Tax Code, is
 28-35 amended by adding Section 151.433 to read as follows:

28-36 Sec. 151.433. TAX REIMBURSEMENT FOR FINANCIAL ASSISTANCE
 28-37 AND FOOD STAMP RECIPIENTS. (a) This section applies to a person
 28-38 who:

28-39 (1) receives financial assistance under Chapter 31,
 28-40 Human Resources Code, or nutritional assistance under Chapter 33,
 28-41 Human Resources Code, through the use of an electronic benefits
 28-42 transfer system; or

28-43 (2) is eligible to receive financial assistance under
 28-44 Chapter 31, Human Resources Code, through the use of an electronic
 28-45 benefits transfer system, but to whom that financial assistance is
 28-46 not paid because a sanction is applied against the person under
 28-47 Section 31.0032, Human Resources Code.

28-48 (b) The comptroller and the executive commissioner of the
 28-49 Health and Human Services Commission by joint rule shall establish
 28-50 a program to reimburse a person to which this section applies for 20
 28-51 percent of the estimated tax the person will pay under this chapter
 28-52 during a state fiscal year.

28-53 (c) Not later than August 15 of each year, using available
 28-54 statistical data, the comptroller by rule shall estimate the amount
 28-55 of taxes a person to which this section applies will pay under this
 28-56 chapter during the next state fiscal year. In estimating that
 28-57 amount, the comptroller shall consider:

28-58 (1) the amount of the individual's federal adjusted
 28-59 gross income, as defined by federal law;

28-60 (2) the number of dependents the individual has for
 28-61 federal income tax purposes; and

28-62 (3) any other information the comptroller considers
 28-63 appropriate.

28-64 (d) Based on the estimations made under Subsection (c), the
 28-65 comptroller shall develop and adopt a table specifying by income
 28-66 bracket and number of dependents:

28-67 (1) the estimated amount of taxes persons to which
 28-68 this section applies will pay under this chapter during the next
 28-69 state fiscal year; and

29-1 (2) the amount of reimbursement the persons are
 29-2 eligible to receive under Subsection (b).

29-3 (e) The comptroller shall provide the table to the executive
 29-4 commissioner of the Health and Human Services Commission as soon as
 29-5 possible after the date the table is adopted. Using the table, the
 29-6 executive commissioner shall provide to each person to which this
 29-7 section applies reimbursement in the form of:

29-8 (1) additional monthly state money payments if the
 29-9 person is receiving financial assistance under Chapter 31, Human
 29-10 Resources Code; or

29-11 (2) additional monthly nutritional assistance if the
 29-12 person is not receiving financial assistance under Chapter 31,
 29-13 Human Resources Code, but is receiving nutritional assistance under
 29-14 Chapter 33, Human Resources Code.

29-15 (f) Reimbursement provided under Subsection (e) must be
 29-16 made available to the person using the electronic benefits transfer
 29-17 system through which the person is receiving the financial or
 29-18 nutritional assistance. Except as provided by Subsection (g), the
 29-19 amount of the monthly reimbursement is equal to one-twelfth of the
 29-20 amount determined under Subsection (d)(2).

29-21 (g) Notwithstanding any other law, the total amount of
 29-22 reimbursements provided under this section may not exceed \$75
 29-23 million each state fiscal year. The comptroller and the executive
 29-24 commissioner of the Health and Human Services Commission shall take
 29-25 any necessary action to ensure that this limit is not exceeded,
 29-26 including:

29-27 (1) decreasing the percentage of reimbursement of
 29-28 taxes paid under this chapter for which a person is otherwise
 29-29 eligible;

29-30 (2) decreasing the amounts of the monthly state money
 29-31 payments or monthly nutritional assistance on a pro rata basis or by
 29-32 a specific amount; or

29-33 (3) suspending the reimbursements.

29-34 (h) Notwithstanding any other law, a person described by
 29-35 Subsection (a)(2) is entitled to reimbursement provided under this
 29-36 section to the same extent the person would be entitled to that
 29-37 reimbursement if a sanction were not applied against the person
 29-38 under Section 31.0032, Human Resources Code.

29-39 (b) Subchapter B, Chapter 31, Human Resources Code, is
 29-40 amended by adding Section 31.0321 to read as follows:

29-41 Sec. 31.0321. EXCLUSION OF CERTAIN TAX REIMBURSEMENTS. The
 29-42 Health and Human Services Commission may not consider any
 29-43 reimbursement of estimated taxes to which a person may be entitled
 29-44 under Section 151.433, Tax Code, in determining:

29-45 (1) whether the person meets household income and
 29-46 resource requirements for financial assistance under this chapter;
 29-47 or

29-48 (2) the amount of financial assistance granted to the
 29-49 person under this chapter for the support of dependent children.

29-50 (c) Chapter 33, Human Resources Code, is amended by adding
 29-51 Section 33.028 to read as follows:

29-52 Sec. 33.028. EXCLUSION OF CERTAIN TAX REIMBURSEMENTS. To
 29-53 the extent permitted by federal law, the Health and Human Services
 29-54 Commission may not consider any reimbursement of estimated taxes to
 29-55 which a person may be entitled under Section 151.433, Tax Code, in
 29-56 determining whether the person meets the household income and
 29-57 resource requirements for eligibility for food stamps.

29-58 (d) If before implementing any provision of this section a
 29-59 state agency determines that a waiver or authorization from a
 29-60 federal agency is necessary for implementation of that provision,
 29-61 the agency affected by the provision shall request the waiver or
 29-62 authorization and may delay implementing that provision until the
 29-63 waiver or authorization is granted.

29-64 SECTION 3A.05. There are exempted from the taxes imposed by
 29-65 Chapter 151, Tax Code, as amended by this Act, the receipts from the
 29-66 sale, use, storage, rental, or other consumption in this state of
 29-67 services that became subject to the taxes because of the terms of
 29-68 this part and that are the subject of a written contract or bid
 29-69 entered into on or before July 1, 2005. The exemption provided by

30-1 this section expires July 1, 2007.

30-2 SECTION 3A.06. The change in law made by this part does not
30-3 affect tax liability accruing before the effective date of this
30-4 part. That liability continues in effect as if this part had not
30-5 been enacted, and the former law is continued in effect for the
30-6 collection of taxes due and for civil and criminal enforcement of
30-7 the liability for those taxes.

30-8 SECTION 3A.07. (a) Except as otherwise provided by this
30-9 part, this part takes effect September 1, 2005, if this Act receives
30-10 a vote of two-thirds of all the members elected to each house, as
30-11 provided by Section 39, Article III, Texas Constitution. If this
30-12 Act does not receive the vote necessary for effect on that date,
30-13 this part takes effect on the first day of the first month that
30-14 begins on or after the 91st day after the last day of the
30-15 legislative session.

30-16 (b) Section 151.051(b), Tax Code, as amended by this part,
30-17 takes effect October 1, 2005, if this Act receives a vote of
30-18 two-thirds of all the members elected to each house, as provided by
30-19 Section 39, Article III, Texas Constitution. If this Act does not
30-20 receive the vote necessary for effect on that date, this part takes
30-21 effect on the first day of the first calendar quarter that begins on
30-22 or after the 91st day after the last day of the legislative session.

30-23 PART B. MOTOR VEHICLE SALES AND USE TAX

30-24 SECTION 3B.01. Section 152.002, Tax Code, is amended by
30-25 adding Subsection (f) to read as follows:

30-26 (f) Notwithstanding Subsection (a), the total consideration
30-27 of a used motor vehicle is the amount on which the tax is computed as
30-28 provided by Section 152.0412.

30-29 SECTION 3B.02. Section 152.021(b), Tax Code, is amended to
30-30 read as follows:

30-31 (b) The tax rate is 6.75 [~~6-1/4~~] percent of the total
30-32 consideration.

30-33 SECTION 3B.03. Section 152.022(b), Tax Code, is amended to
30-34 read as follows:

30-35 (b) The tax rate is 6.75 [~~6-1/4~~] percent of the total
30-36 consideration.

30-37 SECTION 3B.04. Section 152.026(b), Tax Code, is amended to
30-38 read as follows:

30-39 (b) The tax rate is 10 percent of the gross rental receipts
30-40 from the rental of a rented motor vehicle for 30 days or less and
30-41 6.75 [~~6-1/4~~] percent of the gross rental receipts from the rental of
30-42 a rented motor vehicle for longer than 30 days.

30-43 SECTION 3B.05. Section 152.028(b), Tax Code, is amended to
30-44 read as follows:

30-45 (b) The tax rate is 6.75 [~~6-1/4~~] percent of the total
30-46 consideration.

30-47 SECTION 3B.06. Section 152.041(a), Tax Code, is amended to
30-48 read as follows:

30-49 (a) The tax assessor-collector of the county in which an
30-50 application for registration or for a Texas certificate of title is
30-51 made shall collect taxes imposed by this chapter, subject to
30-52 Section 152.0412, unless another person is required by this chapter
30-53 to collect the taxes.

30-54 SECTION 3B.07. Subchapter C, Chapter 152, Tax Code, is
30-55 amended by adding Section 152.0412 to read as follows:

30-56 Sec. 152.0412. STANDARD PRESUMPTIVE VALUE; USE BY TAX
30-57 ASSESSOR-COLLECTOR. (a) In this section, "standard presumptive
30-58 value" means the average retail value of a motor vehicle as
30-59 determined by the Texas Department of Transportation, based on a
30-60 nationally recognized motor vehicle industry reporting service.

30-61 (b) If the amount paid for a motor vehicle subject to the tax
30-62 imposed by this chapter is equal to or greater than the standard
30-63 presumptive value of the vehicle, a county tax assessor-collector
30-64 shall compute the tax on the amount paid.

30-65 (c) If the amount paid for a motor vehicle subject to the tax
30-66 imposed by this chapter is less than the standard presumptive value
30-67 of the vehicle, a county tax assessor-collector shall compute the
30-68 tax on the standard presumptive value unless the purchaser
30-69 establishes the retail value of the vehicle as provided by

31-1 Subsection (d).

31-2 (d) A county tax assessor-collector shall compute the tax
 31-3 imposed by this chapter on the retail value of a motor vehicle if:

31-4 (1) the retail value is shown on an appraisal
 31-5 certified by an adjuster licensed under Chapter 4101, Insurance
 31-6 Code, or by a motor vehicle dealer operating under Subchapter B,
 31-7 Chapter 503, Transportation Code;

31-8 (2) the appraisal is on a form prescribed by the
 31-9 comptroller for that purpose; and

31-10 (3) the purchaser of the vehicle obtains the appraisal
 31-11 not later than the 20th day after the date of purchase.

31-12 (e) On request, a motor vehicle dealer operating under
 31-13 Subchapter B, Chapter 503, Transportation Code, shall provide a
 31-14 certified appraisal of the retail value of a motor vehicle. The
 31-15 comptroller by rule shall establish a fee that a dealer may charge
 31-16 for providing the certified appraisal. The county tax
 31-17 assessor-collector shall retain a copy of a certified appraisal
 31-18 received under this section for a period prescribed by the
 31-19 comptroller.

31-20 (f) The Texas Department of Transportation shall maintain
 31-21 information on the standard presumptive values of motor vehicles as
 31-22 part of the department's registration and title system. The
 31-23 department shall update the information at least quarterly each
 31-24 calendar year.

31-25 (g) This section does not apply to a transaction described
 31-26 by Section 152.024 or 152.025.

31-27 SECTION 3B.08. Not later than November 1, 2005, the Texas
 31-28 Department of Transportation shall:

31-29 (1) establish standard presumptive values for motor
 31-30 vehicles as provided by Section 152.0412, Tax Code, as added by this
 31-31 part;

31-32 (2) modify the department's registration and title
 31-33 system as needed to include that information and administer that
 31-34 section; and

31-35 (3) make that information available through the system
 31-36 to all county tax assessor-collectors.

31-37 SECTION 3B.09. (a) Except as provided by Subsection (b) of
 31-38 this section, this part takes effect September 1, 2005, if this Act
 31-39 receives a vote of two-thirds of all the members elected to each
 31-40 house, as provided by Section 39, Article III, Texas Constitution.
 31-41 If this Act does not receive the vote necessary for effect on that
 31-42 date, this part takes effect on the first day of the first month
 31-43 that begins on or after the 91st day after the last day of the
 31-44 legislative session.

31-45 (b) Section 152.0412, Tax Code, as added by this part, takes
 31-46 effect November 1, 2005.

31-47 PART C. BOAT AND BOAT MOTOR SALES AND USE TAX

31-48 SECTION 3C.01. Section 160.021(b), Tax Code, is amended to
 31-49 read as follows:

31-50 (b) The tax rate is 6.75 [~~6-1/4~~] percent of the total
 31-51 consideration.

31-52 SECTION 3C.02. Section 160.022(b), Tax Code, is amended to
 31-53 read as follows:

31-54 (b) The tax rate is 6.75 [~~6-1/4~~] percent of the total
 31-55 consideration.

31-56 SECTION 3C.03. This part takes effect September 1, 2005, if
 31-57 this Act receives a vote of two-thirds of all the members elected to
 31-58 each house, as provided by Section 39, Article III, Texas
 31-59 Constitution. If this Act does not receive the vote necessary for
 31-60 effect on that date, this part takes effect on the first day of the
 31-61 first month that begins on or after the 91st day after the last day
 31-62 of the legislative session.

31-63 ARTICLE 4. TAX ON TOBACCO PRODUCTS AND ALCOHOL

31-64 PART A. CIGARETTE AND TOBACCO PRODUCTS

31-65 SECTION 4A.01. Section 154.021(b), Tax Code, is amended to
 31-66 read as follows:

31-67 (b) The tax rates are:

31-68 (1) \$50.50 [~~\$20.50~~] per thousand on cigarettes
 31-69 weighing three pounds or less per thousand; and

32-1 (2) the rate provided by Subdivision (1) plus \$2.10
32-2 per thousand on cigarettes weighing more than three pounds per
32-3 thousand.

32-4 SECTION 4A.01A. Effective September 1, 2007, Section
32-5 154.021(b), Tax Code, is amended to read as follows:

32-6 (b) The tax rates are:

32-7 (1) \$70.50 [~~\$20.50~~] per thousand on cigarettes
32-8 weighing three pounds or less per thousand; and

32-9 (2) the rate provided by Subdivision (1) plus \$2.10
32-10 per thousand on cigarettes weighing more than three pounds per
32-11 thousand.

32-12 SECTION 4A.02. Section 155.021(b), Tax Code, is amended to
32-13 read as follows:

32-14 (b) The tax rates are:

32-15 (1) 1.14 cents [~~one cent~~] per 10 or fraction of 10 on
32-16 cigars weighing three pounds or less per thousand;

32-17 (2) \$8.52 [~~\$7.50~~] per thousand on cigars that:
32-18 (A) weigh more than three pounds per thousand;
32-19 and

32-20 (B) sell at factory list price, exclusive of any
32-21 trade discount, special discount, or deal, for 3.3 cents or less
32-22 each;

32-23 (3) \$12.50 [~~\$11~~] per thousand on cigars that:
32-24 (A) weigh more than three pounds per thousand;
32-25 (B) sell at factory list price, exclusive of any
32-26 trade discount, special discount, or deal, for more than 3.3 cents
32-27 each; and

32-28 (C) contain no substantial amount of nontobacco
32-29 ingredients; and

32-30 (4) \$17.04 [~~\$15~~] per thousand on cigars that:
32-31 (A) weigh more than three pounds per thousand;
32-32 (B) sell at factory list price, exclusive of any
32-33 trade discount, special discount, or deal, for more than 3.3 cents
32-34 each; and

32-35 (C) contain a substantial amount of nontobacco
32-36 ingredients.

32-37 SECTION 4A.03. Section 155.0211(b), Tax Code, is amended to
32-38 read as follows:

32-39 (b) The tax rate for tobacco products other than cigars is
32-40 40 [~~35.213~~] percent of the manufacturer's list price, exclusive of
32-41 any trade discount, special discount, or deal.

32-42 SECTION 4A.04. Except as otherwise provided by this part,
32-43 this part takes effect September 1, 2005, if this Act receives a
32-44 vote of two-thirds of all the members elected to each house, as
32-45 provided by Section 39, Article III, Texas Constitution. If this
32-46 Act does not receive the vote necessary for effect on that date,
32-47 this part takes effect on the first day of the first month that
32-48 begins on or after the 91st day after the last day of the
32-49 legislative session.

32-50 PART B. ALCOHOL TAXES

32-51 SECTION 4B.01. Section 201.03, Alcoholic Beverage Code, is
32-52 amended to read as follows:

32-53 Sec. 201.03. TAX ON DISTILLED SPIRITS. (a) A tax is
32-54 imposed on the first sale of distilled spirits at the rate of \$2.88
32-55 [~~\$2.40~~] per gallon.

32-56 (b) The minimum tax imposed on packages of distilled spirits
32-57 containing two ounces or less is six [~~five~~] cents per package.

32-58 (c) Should packages containing less than one-half pint but
32-59 more than two ounces ever be legalized in this state, the minimum
32-60 tax imposed on each of these packages is 14.64 cents [~~\$0.122~~].

32-61 SECTION 4B.02. Section 201.04, Alcoholic Beverage Code, is
32-62 amended to read as follows:

32-63 Sec. 201.04. TAX ON VINOUS LIQUOR. (a) A tax is imposed on
32-64 the first sale of vinous liquor that does not contain over 14
32-65 percent of alcohol by volume at the rate of 24.48 [~~20.4~~] cents per
32-66 gallon.

32-67 (b) A tax is imposed on vinous liquor that contains more
32-68 than 14 percent of alcohol by volume at the rate of 48.96 [~~40.8~~]
32-69 cents per gallon.

33-1 (c) A tax is imposed on artificially carbonated and natural
 33-2 sparkling vinous liquor at the rate of 61.92 [~~51.6~~] cents per
 33-3 gallon.

33-4 SECTION 4B.03. Section 201.42, Alcoholic Beverage Code, is
 33-5 amended to read as follows:

33-6 Sec. 201.42. TAX ON ALE AND MALT LIQUOR. A tax is imposed on
 33-7 the first sale of ale and malt liquor at the rate of 23.76 cents
 33-8 [~~\$0.198~~] per gallon.

33-9 SECTION 4B.04. Section 203.01, Alcoholic Beverage Code, is
 33-10 amended to read as follows:

33-11 Sec. 203.01. TAX ON BEER. A tax is imposed on the first sale
 33-12 of beer manufactured in this state or imported into this state at
 33-13 the rate of \$7.20 [~~six dollars~~] per barrel.

33-14 SECTION 4B.05. Section 183.021, Tax Code, is amended to
 33-15 read as follows:

33-16 Sec. 183.021. TAX IMPOSED ON MIXED BEVERAGES. A tax at the
 33-17 rate of 16.8 [~~14~~] percent is imposed on the gross receipts of a
 33-18 permittee received from the sale, preparation, or service of mixed
 33-19 beverages or from the sale, preparation, or service of ice or
 33-20 nonalcoholic beverages that are sold, prepared, or served for the
 33-21 purpose of being mixed with an alcoholic beverage and consumed on
 33-22 the premises of the permittee.

33-23 SECTION 4B.06. This part takes effect September 1, 2005, if
 33-24 this Act receives a vote of two-thirds of all the members elected to
 33-25 each house, as provided by Section 39, Article III, Texas
 33-26 Constitution. If this Act does not receive the vote necessary for
 33-27 effect on that date, this part takes effect on the first day of the
 33-28 first month that begins on or after the 91st day after the last day
 33-29 of the legislative session.

33-30 ARTICLE 5. STATEWIDE REFERENDUM

33-31 SECTION 5.01. (a) At the general election to be held on
 33-32 November 8, 2005, the voters shall be permitted to vote in a
 33-33 referendum as provided by this article.

33-34 (b) The ballot shall be printed to provide for voting for or
 33-35 against the proposition: "Imposition of the franchise tax on all
 33-36 business entities, other than sole proprietorships, at a rate of
 33-37 4.25 percent of earned surplus to provide for an additional 19-cent
 33-38 reduction in the maximum school district maintenance and operations
 33-39 property tax rate, beginning in tax year 2006."

33-40 (c) The proposition shall be printed on the ballot beneath
 33-41 the proposed constitutional amendments under the heading:
 33-42 "Referendum Proposition."

33-43 SECTION 5.02. (a) Notice of the election shall be given in
 33-44 the same manner that notice of proposed constitutional amendments
 33-45 is given.

33-46 (b) Returns of the votes cast on the proposition shall be
 33-47 prepared and canvassed in the same manner as the returns on proposed
 33-48 constitutional amendments.

33-49 SECTION 5.03. (a) It is the intention of the legislature
 33-50 that, although a referendum on matters of statewide importance is
 33-51 rarely conducted, the will of the people in relation to this
 33-52 particular issue should be honored.

33-53 (b) If a majority of the votes cast in the referendum oppose
 33-54 the proposition, Part E of Article 2 of this Act does not take
 33-55 effect.

33-56 (c) If a majority of the votes cast in the referendum favor
 33-57 the proposition, Part E of Article 2 of this Act takes effect
 33-58 January 1, 2007.

33-59 ARTICLE 6. EFFECTIVE DATE

33-60 SECTION 6.01. (a) Except as provided by Subsection (b) of
 33-61 this section, this Act takes effect September 1, 2005, if this Act
 33-62 receives a vote of two-thirds of all the members elected to each
 33-63 house, as provided by Section 39, Article III, Texas Constitution.
 33-64 If this Act does not receive the vote necessary for effect on that
 33-65 date, this Act takes effect on the first day of the first month that
 33-66 begins on or after the 91st day after the last day of the
 33-67 legislative session.

33-68 (b) If a section, part, or article of this bill provides a
 33-69 different effective date than provided by Subsection (a) of this

34-1 section, that section, part, or article takes effect according to
34-2 its terms.

34-3

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