

By: Burnam

H.B. No. 26

A BILL TO BE ENTITLED

AN ACT

relating to the imposition of an income tax on income that exceeds \$100,000 to provide property tax relief and fund public education; providing penalties.

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

SECTION 1. Title 2, Tax Code, is amended by adding Subtitle L to read as follows:

SUBTITLE L. PERSONAL INCOME TAX

CHAPTER 261. PERSONAL INCOME TAX

SUBCHAPTER A. IMPOSITION OF TAX

Sec. 261.001. TAX IMPOSED. (a) A tax is imposed for each tax year:

(1) on the taxable income that exceeds \$100,000 of every resident of this state; and

(2) on the taxable income that exceeds \$100,000 derived from sources in this state of every nonresident.

(b) The tax rates for an individual are as follows:

(1) for taxable income that exceeds \$100,000 but does not exceed \$150,000, two percent of the taxable income;

(2) for taxable income that exceeds \$150,000 but does not exceed \$250,000, \$1,000 plus three percent of the taxable income that exceeds \$150,000 but does not exceed \$250,000;

(3) for taxable income that exceeds \$250,000 but does not exceed \$500,000, \$4,000 plus four percent of the taxable income

1 that exceeds \$250,000 but does not exceed \$500,000;

2 (4) for taxable income that exceeds \$500,000 but does  
3 not exceed \$1 million, \$14,000 plus five percent of the taxable  
4 income that exceeds \$500,000 but does not exceed \$1 million; and

5 (5) for taxable income that exceeds \$1 million,  
6 \$39,000 plus six percent of the taxable income that exceeds \$1  
7 million.

8 Sec. 261.002. JOINT RETURN. If persons subject to the tax  
9 under this chapter file a joint federal income tax return with a  
10 spouse, they may file a joint return under this chapter but they may  
11 not combine their incomes for the purpose of determining the amount  
12 of tax owed. The separate incomes of each spouse are taxed as  
13 individual incomes under Section 261.001.

14 Sec. 261.003. MEANING OF TERMS. (a) In this chapter:

15 (1) an individual is a resident of this state if the  
16 individual:

17 (A) is domiciled in this state, unless the  
18 individual does not maintain a permanent abode in this state and  
19 does maintain a permanent abode elsewhere and spends, in the  
20 aggregate, not more than 30 days of the tax year in this state; or

21 (B) is not domiciled in this state but maintains  
22 a permanent abode in this state and spends, in the aggregate, more  
23 than 183 days of the tax year in this state; and

24 (2) an individual is a nonresident if the individual  
25 is not a resident of this state.

26 (b) Any term used in this chapter and not defined by or for  
27 purposes of this chapter has the same meaning as when used in a

1 comparable context in the laws of the United States relating to  
2 federal income taxes, unless a different meaning is clearly  
3 required. Any reference in this chapter to federal law means the  
4 provisions of the Internal Revenue Code of 1986 in effect on  
5 December 31, 2006, and other provisions of federal laws relating to  
6 federal income taxes in effect on December 31, 2006.

7 [Sections 261.004-261.050 reserved for expansion]

8 SUBCHAPTER B. COMPUTATION OF TAXABLE INCOME

9 Sec. 261.051. TAXABLE INCOME. The taxable income of a  
10 resident of this state is the resident's federal adjusted gross  
11 income as defined by federal law.

12 Sec. 261.052. CREDIT FOR INCOME TAX PAID TO ANOTHER STATE.

13 (a) A resident individual is allowed a credit against the tax  
14 otherwise due under this chapter for the amount of any income tax  
15 imposed on the individual for the tax year by another state of the  
16 United States on income that is derived from sources in that state  
17 and that is subject to tax under this chapter.

18 (b) The credit provided by this section may not exceed the  
19 proportion of the tax otherwise due under this chapter that the  
20 amount of the taxpayer's adjusted gross income derived from sources  
21 in the other taxing jurisdiction bears to the taxpayer's entire  
22 adjusted gross income as modified by this subchapter.

23 Sec. 261.053. DUAL RESIDENCE; REDUCTION OF TAX. If a  
24 taxpayer is a resident of this state and is regarded as a resident  
25 of another jurisdiction for purposes of personal income taxation,  
26 the comptroller shall reduce the tax on that portion of the  
27 taxpayer's income that is subject to tax in both jurisdictions

1 solely by virtue of dual residence. The reduction shall be in an  
2 amount equal to that portion of the lower of the two taxes  
3 applicable to the income taxed twice that the tax imposed by this  
4 state bears to the combined taxes of the two jurisdictions on the  
5 income taxed twice.

6 Sec. 261.054. NONRESIDENT INDIVIDUALS--TAXABLE INCOME.

7 The taxable income of a nonresident individual is that part of the  
8 individual's federal adjusted gross income derived from sources in  
9 this state determined under Section 261.055.

10 Sec. 261.055. ADJUSTED GROSS INCOME FROM SOURCES IN THIS  
11 STATE--NONRESIDENT. (a) The adjusted gross income of a  
12 nonresident derived from sources in this state is the net amount of  
13 items of income, gain, loss, and deduction entering into the  
14 nonresident's federal adjusted gross income that are derived from  
15 or connected with sources in this state, including:

16 (1) the nonresident's distributive share of  
17 partnership income and deductions determined under Section  
18 261.403; and

19 (2) the nonresident's share of estate or trust income  
20 and deductions derived from sources in this state.

21 (b) Items of income, gain, loss, and deduction derived from  
22 or connected with sources in this state are those items  
23 attributable to:

24 (1) the ownership or disposition of an interest in  
25 real or tangible personal property in this state; and

26 (2) a business, trade, profession, or occupation  
27 conducted in this state.

1       (c) Income from intangible personal property, including  
2 annuities, dividends, interest, and gains from the disposition of  
3 intangible personal property, constitutes income derived from  
4 sources in this state only to the extent that the income is from  
5 property used in a business, trade, profession, or occupation  
6 carried on in this state.

7       (d) Deductions for capital losses, net long-term capital  
8 gains, and net operating losses derived from or connected with  
9 sources in this state, are determined in the same manner as the  
10 corresponding federal deductions. However, the extent to which the  
11 deductions are derived from or connected with sources in this state  
12 is determined under the comptroller's rules.

13       (e) For a nonresident individual who is a shareholder of a  
14 corporation that is an electing small business corporation for  
15 federal income tax purposes, the undistributed taxable income of  
16 the corporation does not constitute income derived from sources in  
17 this state and a net operating loss of the corporation does not  
18 constitute a loss or deduction connected with sources in this  
19 state.

20       (f) If a business, trade, profession, or occupation is  
21 carried on partly in and partly outside this state, the items of  
22 income and deduction derived from or connected with sources in this  
23 state are determined by apportionment and allocation consistent  
24 with Chapter 141 under the comptroller's rules.

25       (g) Compensation paid by the United States for service in  
26 the armed forces of the United States performed by a nonresident is  
27 not income derived from sources in this state.

1 [Sections 261.056-261.100 reserved for expansion]

2 SUBCHAPTER C. [RESERVED]

3 [Sections 261.101-261.200 reserved for expansion]

4 SUBCHAPTER D. ACCOUNTING PERIODS AND METHODS

5 Sec. 261.201. PERIOD FOR COMPUTATION OF TAXABLE INCOME.

6 (a) For purposes of the tax imposed by this chapter, a taxpayer's  
7 tax year is the same as the taxpayer's tax year for federal income  
8 tax purposes.

9 (b) If a taxpayer's tax year is changed for federal income  
10 tax purposes, the taxpayer's tax year for purposes of the tax  
11 imposed by this chapter shall be similarly changed.

12 Sec. 261.202. METHODS OF ACCOUNTING. (a) A taxpayer's  
13 method of accounting is the same as the taxpayer's method of  
14 accounting for federal income tax purposes. If a single method of  
15 accounting has not been regularly used by the taxpayer, taxable  
16 income for purposes of this chapter shall be computed under any  
17 method that in the opinion of the comptroller fairly reflects  
18 income.

19 (b) If a taxpayer's method of accounting is changed for  
20 federal income tax purposes, the taxpayer's method of accounting  
21 for purposes of this chapter is changed in the same manner.

22 Sec. 261.203. ADJUSTMENTS. In computing a taxpayer's  
23 taxable income for any tax year under a method of accounting  
24 different from the method under which the taxpayer's taxable income  
25 for the previous year was computed, there shall be taken into  
26 account those adjustments that are determined, under rules  
27 prescribed by the comptroller, to be necessary solely by reason of

1 the change in order to prevent amounts from being duplicated or  
2 omitted.

3 Sec. 261.204. LIMITATION ON ADDITIONAL TAX. (a) If a  
4 taxpayer's method of accounting is changed, other than from an  
5 accrual to an installment method, an additional tax that results  
6 from adjustments determined to be necessary solely because of the  
7 change may not be greater than if those adjustments were ratably  
8 allocated and included for the tax year of the change and not more  
9 than two preceding tax years during which the taxpayer used the  
10 method of accounting from which the change is made.

11 (b) If a taxpayer's method of accounting is changed from an  
12 accrual to an installment method, an additional tax for the year of  
13 the change of method and for a subsequent year that is attributable  
14 to the receipt of installment payments properly accrued in a prior  
15 year shall be reduced by the portion of tax for any prior tax year  
16 attributable to the accrual of the installment payments, under  
17 rules adopted by the comptroller.

18 [Sections 261.205-261.400 reserved for expansion]

19 SUBCHAPTER E. PARTNERS AND PARTNERSHIPS

20 Sec. 261.401. ENTITY NOT TAXABLE. A partnership as an  
21 entity is not subject to the tax imposed by this chapter. Persons  
22 carrying on business as partners are liable for the tax imposed by  
23 this chapter only in their separate or individual capacities.

24 Sec. 261.402. RESIDENT PARTNER--ADJUSTED GROSS INCOME. (a)  
25 Partnership income, gain, loss, or deduction shall be allocated in  
26 accordance with each partner's distributive share for federal  
27 income tax purposes.

1       (b) Each item of partnership income, gain, loss, or  
2 deduction has the same character for a partner under this chapter as  
3 it has for federal income tax purposes. If an item is not  
4 characterized for federal income tax purposes, it has the same  
5 character for a partner as if realized directly from the source from  
6 which realized by the partnership or incurred in the same manner as  
7 incurred by the partnership.

8       (c) If a partner's distributive share of an item of  
9 partnership income, gain, loss, or deduction is determined for  
10 federal income tax purposes by a special provision in the  
11 partnership agreement with respect to the item, and the principal  
12 purpose of the provision is the avoidance or evasion of tax under  
13 this chapter, the partner's distributive share of the item and a  
14 modification required with respect to it is determined in  
15 accordance with the partner's distributive share of the taxable  
16 income or loss of the partnership generally, excluding those items  
17 requiring separate computation under Section 702, Internal Revenue  
18 Code of 1986.

19       Sec. 261.403. NONRESIDENT PARTNER--ADJUSTED GROSS INCOME  
20 FROM SOURCES IN THIS STATE. (a) In determining the adjusted gross  
21 income of a nonresident partner of any partnership, there shall be  
22 included only that part derived from or connected with sources in  
23 this state of the partner's distributive share of items of  
24 partnership income, gain, loss, and deduction entering into the  
25 partner's federal adjusted gross income, as that part is determined  
26 under rules adopted by the comptroller and consistent with the  
27 rules adopted under Section 261.055.



1       (b) Except as authorized by Subsection (c), in determining  
2 the sources of a nonresident partner's income, no effect is given to  
3 a provision in the partnership agreement that:

4           (1) characterizes payments to the partner as being for  
5 services or for the use of capital, or allocates to the partner, as  
6 income or gain from sources outside this state, a greater  
7 proportion of the partner's distributive share of partnership  
8 income or gain than the ratio of partnership income or gain from  
9 sources outside this state to partnership income or gain from all  
10 sources; or

11           (2) allocates to the partner a greater proportion of a  
12 partnership item of loss or deduction connected with sources in  
13 this state than the partner's proportionate share, for federal  
14 income tax purposes, of partnership loss or deduction generally.

15       (c) The comptroller may, on application, authorize the use  
16 of other methods of determining a nonresident partner's portion of  
17 partnership items derived from or connected with sources in this  
18 state, and the modifications related to it, that are appropriate  
19 and equitable, on terms the comptroller may require.

20       (d) A nonresident partner's distributive share of items of  
21 income, gain, loss, or deduction is determined under Section  
22 261.402(a). The character of partnership items for a nonresident  
23 partner is determined under Section 261.402(b). The effect of a  
24 special provision in a partnership agreement, other than a  
25 provision described by Subsection (b), having as a principal  
26 purpose the avoidance or evasion of tax under this chapter is  
27 determined under Section 261.402(c).

1           [Sections 261.404-261.500 reserved for expansion]

2                   SUBCHAPTER F. TAX RETURNS AND PAYMENTS

3           Sec. 261.501. PERSONS REQUIRED TO MAKE RETURNS OF INCOME. A  
4 state income tax return shall be made by every individual who has  
5 adjusted gross income from sources in this state in excess of  
6 \$100,000.

7           Sec. 261.502. RETURNS BY FIDUCIARIES. (a) An income tax  
8 return for a deceased individual shall be made and filed by the  
9 executor, administrator, or other person charged with the care of  
10 the property of the decedent. A final return of a decedent is due  
11 when it would have been due if the decedent had not died.

12           (b) An income tax return for an individual who is unable to  
13 make a return because of minority or other disability shall be made  
14 and filed by the individual's duly authorized agent, guardian,  
15 conservator, fiduciary, or other person charged with the care of  
16 the individual or the individual's property other than a receiver  
17 in possession of only a part of the individual's property.

18           (c) If two or more fiduciaries are acting jointly, the  
19 return may be made by any one of them.

20           Sec. 261.503. NOTICE OF QUALIFICATION AS RECEIVER. A  
21 receiver, trustee in bankruptcy, assignee for benefit of creditors,  
22 or other similar fiduciary shall give notice of the person's  
23 qualification to the comptroller, as may be required by rule.

24           Sec. 261.504. CHANGE OF STATUS AS RESIDENT OR NONRESIDENT  
25 DURING YEAR. (a) If the status of an individual changes during the  
26 individual's tax year from resident to nonresident or from  
27 nonresident to resident, the comptroller by rule may require the

1 individual to file one return for the portion of the year during  
2 which the individual is a resident and one for the portion of the  
3 year during which the individual is a nonresident.

4 (b) Except as provided by Subsection (c), the taxable income  
5 of an individual is determined as provided by Section 261.051 for  
6 residents and Section 261.054 for nonresidents as if the  
7 individual's tax year for federal income tax purposes were limited  
8 to the period of the individual's resident and nonresident status  
9 respectively.

10 (c) There shall be included in determining taxable income  
11 from sources in or outside this state, as the case may be, income,  
12 gain, loss, or deduction accrued prior to the change of status even  
13 though not otherwise includable or allowable in respect to the  
14 period before the change, but the taxation or deduction of items  
15 accrued before the change of status is not affected by the change.

16 (d) If two returns are required to be filed under this  
17 section, the total of the taxes due may not be less than would be due  
18 if the total of the taxable incomes reported on the two returns were  
19 includable in one return.

20 Sec. 261.505. TIME AND PLACE FOR FILING RETURNS AND PAYING  
21 TAX. The income tax return required by this chapter shall be filed  
22 not later than the 15th day of the fourth month following the end of  
23 the taxpayer's tax year. A person required to make and file a  
24 return under this chapter shall pay a tax due to the comptroller not  
25 later than the last day that the filing of the return is allowed  
26 without penalty, excluding an extension of time for filing the  
27 return. The comptroller by rule shall prescribe the place for

1 filing a return, statement, or other document required by this  
2 chapter and for the payment of a tax.

3 Sec. 261.506. ESTIMATED TAX. (a) An individual subject to  
4 the income tax imposed by this chapter shall make estimated  
5 payments of the tax. Section 6654, Internal Revenue Code of 1986,  
6 other than Subsections (a), (b), (d)(2), and (e) of that section,  
7 governing the payment of estimated federal income taxes on  
8 individuals applies to the payments required by this section,  
9 including exemptions from the estimated tax payment requirement. A  
10 reference in that section to the federal income tax imposed on  
11 individuals is construed as a reference to the tax imposed by this  
12 chapter as required to administer this section. A power or duty  
13 given by Section 6654, Internal Revenue Code of 1986, to the United  
14 States secretary of the treasury is assigned to the comptroller for  
15 purposes of the estimated payments required by this section.

16 (b) The comptroller shall adopt rules for the  
17 administration of this section.

18 (c) Payment of the estimated tax or an installment is  
19 considered payment on account of the tax imposed by this chapter.

20 Sec. 261.507. EXTENSION OF TIME FOR FILING AND PAYMENT. (a)  
21 The comptroller, on terms the comptroller may require, may grant a  
22 reasonable extension of time for payment of tax or an installment,  
23 or for filing a return, statement, or other document required under  
24 this chapter. Except for an extension for a taxpayer who is outside  
25 the United States, an extension for filing a return, statement, or  
26 document may not exceed six months.

27 (b) If the time for the payment of an amount of tax is

1 extended, the comptroller may require the taxpayer to furnish a  
2 bond or other security in an amount not exceeding twice the amount  
3 of tax for which the extension of time for payment is granted, on  
4 terms the comptroller may require.

5 Sec. 261.508. CHANGE OF ELECTION. An election expressly  
6 authorized by this chapter may be changed as authorized by the  
7 comptroller or by the comptroller's rule.

8 Sec. 261.509. SIGNING OF RETURNS AND OTHER DOCUMENTS. (a)  
9 A return, statement, or other document required to be made or filed  
10 under this chapter shall be signed as provided by the comptroller.  
11 An individual's name signed to a return, statement, or other  
12 document is prima facie evidence that the individual signed the  
13 return, statement, or other document.

14 (b) A return, statement, or other document required of a  
15 partnership must be signed by at least one partner. A partner's  
16 name signed to a return, statement, or other document is prima facie  
17 evidence that the partner is authorized to sign on behalf of the  
18 partnership.

19 (c) The making or filing of a return, statement, or other  
20 document or copy required to be made or filed under this chapter,  
21 including a copy of a federal return, constitutes a certification  
22 by the person making or filing the return, statement, or other  
23 document or copy that the statements contained in it are true and  
24 that a copy filed is a true copy.

25 [Sections 261.510-261.520 reserved for expansion]

26 SUBCHAPTER G. INFORMATION RETURNS

27 Sec. 261.521. GENERAL REQUIREMENTS. The comptroller by

1 rule may require the keeping of records, the content and form of  
2 returns and statements, and the filing of copies of federal income  
3 returns and determinations. The comptroller may require a person,  
4 by rule or by notice served on the person, to make returns, render  
5 statements, or keep records, as the comptroller considers  
6 sufficient to show whether the person is liable under this chapter  
7 for tax or for the collection of tax.

8 Sec. 261.522. REPORT OF CHANGE IN FEDERAL TAXABLE INCOME.

9 (a) If the amount of a taxpayer's federal taxable income reported  
10 on the taxpayer's federal income tax return for a tax year is  
11 changed or corrected by the United States Internal Revenue Service  
12 or other competent authority, or as the result of a renegotiation of  
13 a contract or subcontract with the United States, the taxpayer  
14 shall:

15 (1) report the change or correction in federal taxable  
16 income not later than the 90th day after the final determination of  
17 the change, correction, or renegotiation, or as required by the  
18 comptroller; and

19 (2) concede the accuracy of the determination or state  
20 in what way it is erroneous.

21 (b) A taxpayer filing an amended federal income tax return  
22 shall also file, not later than the 90th day after filing, an  
23 amended return under this chapter, and shall give any information  
24 required by the comptroller.

25 (c) The comptroller by rule may prescribe exceptions to the  
26 requirements of this section.

27 [Sections 261.523-261.600 reserved for expansion]

1                   SUBCHAPTER H. ADDITIONS TO TAX; PENALTIES

2                   Sec. 261.601. FAILURE TO FILE TAX RETURN. (a) A person who  
3 does not file a return required under this chapter on or before the  
4 prescribed date is subject to the following penalty based on a  
5 percentage of the full amount of tax owed on the prescribed day:

6                   (1) if the return is filed not later than the 30th day  
7 after the prescribed date, five percent;

8                   (2) if the return is filed later than the 30th day  
9 after the prescribed date, but not later than the 60th day after the  
10 prescribed date, 10 percent;

11                   (3) if the return is filed later than the 60th day  
12 after the prescribed date, but not later than the 90th day after the  
13 prescribed date, 15 percent;

14                   (4) if the return is filed later than the 90th day  
15 after the prescribed date, but not later than the 120th day after  
16 the prescribed date, 20 percent; or

17                   (5) if the return is filed later than the 120th day  
18 after the prescribed date, 25 percent.

19                   (b) The prescribed date is determined with regard to an  
20 extension of time for filing.

21                   (c) In determining the amount owed on the prescribed date,  
22 the taxpayer is entitled to credit for a portion of the tax paid on  
23 or before the prescribed date and other credit that may be claimed  
24 on the return.

25                   (d) The penalty required by this section does not apply if  
26 the taxpayer shows that the failure to file a return was not the  
27 result of wilful neglect before the prescribed date or at any time

1 during the delinquency and that good cause for the failure existed  
2 at all times before filing.

3 Sec. 261.602. FAILURE TO PAY TAX. (a) A person who does not  
4 pay any amount of tax owed by the person on the prescribed date  
5 shall pay, in addition to all other penalties and interest, a  
6 penalty of 10 percent of the amount of the tax due and owing on the  
7 prescribed date.

8 (b) The prescribed date is determined with regard to  
9 extensions of time allowed by the comptroller.

10 (c) A failure to pay all or part of an estimated tax is  
11 considered to be an underpayment of estimated tax. The comptroller  
12 by rule shall prescribe the method of determining the amount and  
13 period of underpayment.

14 Sec. 261.603. PENALTIES AND INTEREST TREATED AS TAX. The  
15 penalties and interest provided by this subchapter shall be paid on  
16 notice and demand and shall be assessed, collected, and paid in the  
17 same manner as other taxes. The comptroller may issue a deficiency  
18 notice for all or part of a penalty or interest along with or  
19 separate from the amount of tax owed in absence of penalties or  
20 interest.

21 [Sections 261.604-261.630 reserved for expansion]

22 SUBCHAPTER I. CREDITS AND REFUNDS

23 Sec. 261.631. CREDITS AND REFUNDS. (a) Within the  
24 applicable period of limitations the comptroller may credit an  
25 overpayment of income tax and interest on the overpayment against a  
26 liability of a tax imposed by the tax laws of this state on the  
27 person who made the overpayment, and the balance shall be refunded



1 by the comptroller out of the proceeds of the tax retained by the  
2 comptroller.

3 (b) The comptroller may prescribe rules providing for  
4 crediting against the estimated tax for a tax year the amount  
5 determined to be an overpayment of the income tax for a preceding  
6 tax year.

7 (c) If an amount of income tax is assessed and collected  
8 after the expiration of the period of limitations properly  
9 applicable, the amount is an overpayment.

10 Sec. 261.632. ABATEMENTS. (a) The comptroller may abate  
11 any unpaid portion of a tax or a tax liability that is excessive in  
12 amount, assessed after the expiration of the applicable period of  
13 limitations, or erroneously or illegally assessed.

14 (b) The comptroller may abate the unpaid portion of a tax or  
15 a tax liability if the comptroller determines under uniform rules  
16 prescribed by the comptroller that the administration and  
17 collection costs involved would not warrant collection of the  
18 amount due.

19 Sec. 261.633. EXTENDED LIMITATION PERIOD. (a) If a  
20 taxpayer is required by Section 261.522 to report a change or  
21 correction in federal taxable income reported on a federal income  
22 tax return, or to report a change or correction that is treated in  
23 the same manner as if it were an overpayment for federal income tax  
24 purposes, or to file an amended return with the comptroller, a claim  
25 for credit or refund of a resulting overpayment of tax must be filed  
26 by the taxpayer not later than the second anniversary of the date  
27 the notice of the change or correction or the amended return was

1 required to be filed with the comptroller. If the report or amended  
2 return required by Section 261.522 is not filed within the period  
3 prescribed by that section, interest on a resulting refund or  
4 credit ceases to accrue after the period. The amount of credit or  
5 refund may not exceed the amount of the reduction in tax  
6 attributable to the federal change, correction, or items amended on  
7 the taxpayer's amended federal income tax return. This subsection  
8 does not affect the time within which or the amount for which a  
9 claim for credit or refund may be filed under a provision other than  
10 this section.

11 (b) If a claim for credit or refund relates to an  
12 overpayment of tax on account of the deductibility by the taxpayer  
13 of a debt as a debt that became worthless or a loss from  
14 worthlessness of a security or the effect that the deductibility of  
15 a debt or of a loss has on the application to the taxpayer of a  
16 carryover, the claim may be made, under rules adopted by the  
17 comptroller, not later than the seventh anniversary of the date  
18 prescribed by law for filing the return for the year with respect to  
19 which the claim is made.

20 (c) If a claim for credit or refund relates to an  
21 overpayment attributable to a net operating loss carryback, the  
22 claim may be made, under rules adopted by the comptroller, not later  
23 than the 15th day of the 40th month following the end of the tax year  
24 of the net operating loss that resulted in the carryback or the  
25 period prescribed by Section 111.104, whichever expires later.

26 [Sections 261.634-261.650 reserved for expansion]

SUBCHAPTER J. MISCELLANEOUS ENFORCEMENT PROVISIONS

Sec. 261.651. TAXPAYER NOT RESIDENT. If notice and demand for the payment of a tax is given to a nonresident and it appears to the comptroller that it is not practicable to locate property of the taxpayer sufficient in amount to cover the amount of tax due, the comptroller may authorize the institution of any available action or proceeding to collect or enforce the claim in any place by any procedure by which a civil judgment of a court of record of this state could be collected or enforced. The comptroller may designate agents or retain counsel outside this state for the purpose of collecting taxes due under this chapter and require of them bonds or other security for the faithful performance of their duties. The comptroller may enter into agreements with the tax department of another state for the collection of taxes from persons found in this state who are delinquent in the payment of income taxes imposed by that state on condition that the agreeing state afford similar assistance in the collection of taxes from persons found in that state who are delinquent in the payment of taxes imposed by this chapter.

Sec. 261.652. INCOME TAX CLAIMS OF OTHER STATES. The courts of this state shall recognize and enforce liabilities for personal income taxes lawfully imposed by another state that extends a like comity to this state, and the duly authorized officer of the other state may sue for the collection of personal income tax in the courts of this state. A certificate by the secretary of state of the other state that an officer suing for the collection of the tax is duly authorized to collect the tax is conclusive proof of the

1 officer's authority. For the purposes of this section, "taxes"  
2 includes additions to tax, interest, and penalties.

3 Sec. 261.653. ORDER TO COMPEL COMPLIANCE. (a) On  
4 application of the attorney general, a judge of a court of  
5 appropriate jurisdiction for the county in which a taxpayer or  
6 other person who intentionally or knowingly refuses to file a tax  
7 return required by this chapter may, by order, direct the person to  
8 file the return. A person who fails or refuses to obey the order is  
9 guilty of contempt of court.

10 (b) If any person intentionally or knowingly refuses to make  
11 available any books, papers, records, or memorandums for  
12 examination by the comptroller or wilfully refuses to attend and  
13 testify, in accordance with the powers conferred on the comptroller  
14 by Chapter 111, on application of the comptroller, a judge in the  
15 court of appropriate jurisdiction for the county where the person  
16 resides may by order direct the person to comply with the  
17 comptroller's request for books, papers, records, or memorandums or  
18 for the person's attendance and testimony. If the books, papers,  
19 records, or memorandums required by the comptroller are in the  
20 custody of a corporation, the order of the court may be directed to  
21 any principal officer of the corporation. A person who fails or  
22 refuses to obey the order is guilty of contempt of court.

23 Sec. 261.654. TRANSFEREES. (a) The liability, at law or in  
24 equity, of a transferee of property of a taxpayer for any tax,  
25 addition to tax, penalty, or interest due under this chapter, is  
26 assessed, paid, and collected in the same manner and subject to the  
27 same provisions and limitations as in the case of the tax to which

1 the liability relates except as otherwise provided by this section.  
2 "Transferee" includes an heir or a recipient of a donation, legacy,  
3 devise, or distribution.

4 (b) The period of limitation for assessment of liability of  
5 a transferee is:

6 (1) the first anniversary of the expiration of the  
7 period of limitation against the initial transferor if the  
8 transferee is the initial transferee;

9 (2) the first anniversary of the expiration of the  
10 period of limitation against the preceding transferee, but not  
11 later than the third anniversary of the expiration of the period of  
12 limitation for assessment against the initial transferor, if the  
13 transferee is not the initial transferee; or

14 (3) notwithstanding Subdivisions (1) and (2), if  
15 before the expiration of the period of limitation under Subdivision  
16 (1) or (2) a proceeding for the collection of the liability has been  
17 begun against the initial transferor or the last preceding  
18 transferee, respectively, the first anniversary of the date on  
19 which the proceeding is terminated.

20 (c) If, before the expiration of the period of limitation  
21 applicable to a transferee, the comptroller and the transferee  
22 consent in writing to an assessment after that time, the liability  
23 may be assessed at any time before the expiration of the agreed  
24 period. The period of limitation on credit or refund to the  
25 transferee of overpayments of tax made by the transferee or of  
26 overpayments of tax made by the transferor of which the transferee  
27 is legally entitled to credit or refund is extended by an agreement

1 under this subsection and any extension of the agreement.

2 (d) If a person dies, the period of limitation for  
3 assessment against that person is the period that would be in effect  
4 had death not occurred.

5 Sec. 261.655. JEOPARDY DETERMINATIONS. (a) If the  
6 comptroller issues a jeopardy determination for a tax for a current  
7 period, the comptroller shall terminate the tax period of the  
8 taxpayer immediately, and the notice and demand for a return and  
9 immediate payment of the tax shall apply to the terminated period  
10 and to income accrued and deductions incurred on or before  
11 termination date if not otherwise properly includable or deductible  
12 for the period.

13 (b) The comptroller may abate the jeopardy determination if  
14 the comptroller finds that jeopardy does not exist.

15 Sec. 261.656. BANKRUPTCY OR RECEIVERSHIP. (a) On the  
16 adjudication of bankruptcy of any taxpayer in any bankruptcy  
17 proceeding or the appointment of a receiver for any taxpayer in any  
18 receivership proceeding before any court of the United States or  
19 any state or territory, any deficiency, together with additions to  
20 tax and interest provided by law, determined by the comptroller may  
21 be immediately assessed.

22 (b) Claims for the deficiency and additions to tax and  
23 interest may be presented, for adjudication in accordance with law,  
24 to the court before which the bankruptcy or receivership proceeding  
25 is pending, despite the pendency of any protest before the  
26 comptroller. A protest against a proposed assessment may not be  
27 filed with the comptroller after the adjudication of bankruptcy or

1 appointment of the receiver.

2 Sec. 261.657. EVIDENCE OF RELATED FEDERAL DETERMINATION.  
3 Evidence of a federal determination relevant to the taxes imposed  
4 by this chapter is admissible in an administrative or judicial  
5 proceeding relating to those taxes.

6 [Sections 261.658-261.670 reserved for expansion]

7 SUBCHAPTER K. OFFENSES

8 Sec. 261.671. ATTEMPT TO EVADE OR DEFEAT TAX. (a) A person  
9 commits an offense if the person intentionally or knowingly  
10 attempts in any manner to evade or defeat a tax imposed by this  
11 chapter or the payment of tax imposed by this chapter.

12 (b) An offense under this section is a felony of the third  
13 degree.

14 Sec. 261.672. FAILURE TO PAY. (a) A person commits an  
15 offense if the person is required under this chapter to pay a tax  
16 imposed by this chapter and the person intentionally or knowingly  
17 fails to pay the tax.

18 (b) An offense under this section is a felony of the third  
19 degree.

20 Sec. 261.673. FAILURE TO FILE RETURN, SUPPLY INFORMATION,  
21 OR PAY TAX. (a) A person commits an offense if the person is  
22 required under this chapter to pay a tax, or required by this  
23 chapter or rule adopted under this chapter to make a return, to keep  
24 records, or to supply information, and the person intentionally or  
25 knowingly fails to pay the tax, make the return, keep the records,  
26 or supply the information at the time or times required by law.

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

1 [Sections 261.674-261.680 reserved for expansion]

2 SUBCHAPTER L. POWERS OF COMPTROLLER

3 Sec. 261.681. COOPERATION WITH OTHER JURISDICTIONS. The  
4 comptroller may permit the United States secretary of the treasury  
5 or the secretary's delegate, or the proper officer of any state or  
6 other jurisdiction imposing an income tax on the incomes of  
7 individuals, or the authorized representative of either officer, to  
8 inspect the income tax returns of an individual, or may furnish to  
9 the officer or authorized representative an abstract of the return  
10 of income of an individual or supply the officer with information  
11 concerning an item of income contained in a return, or disclosed by  
12 the report of an investigation of the income or return of income of  
13 an individual, but permission may be granted only if the statutes of  
14 the United States or of the other jurisdiction, as applicable,  
15 grant substantially similar privileges to the comptroller.

16 Sec. 261.682. COOPERATION WITH OTHER TAX OFFICIALS OF THIS  
17 STATE. The comptroller may permit other tax officials of this state  
18 to inspect tax returns and reports filed under this chapter but the  
19 inspection shall be permitted only for purposes of enforcing a tax  
20 law and only to the extent and under the conditions prescribed by  
21 rule of the comptroller.

22 Sec. 261.683. CONTRACT WITH SECRETARY OF TREASURY FOR  
23 COLLECTION OF TAX. The comptroller may enter into an agreement with  
24 the United States secretary of the treasury or the secretary's  
25 delegate under which, to the extent provided by the terms of the  
26 agreement, the secretary or delegate will administer, enforce, and  
27 collect a tax imposed by this chapter on behalf of this state. The



1 cost of the services performed by the secretary or delegate in  
2 administering, enforcing, or collecting the tax under the terms of  
3 the agreement may be paid from the appropriations for the general  
4 operations of the comptroller.

5 Sec. 261.684. ARMED FORCES RELIEF PROVISIONS. (a) The  
6 period of service in the armed forces of the United States in a  
7 combat zone plus a period of continuous hospitalization outside  
8 this state attributable to that service plus the next 180 days shall  
9 be disregarded in determining, under rules of the comptroller,  
10 whether an act required by this chapter was performed by a taxpayer  
11 or the taxpayer's representative within the time prescribed.

12 (b) If an individual dies during an induction period while  
13 in active service as a member of the armed forces of the United  
14 States and the death occurred while the individual was serving in a  
15 combat zone or as a result of wounds, disease, or injury incurred  
16 while serving, the tax imposed by this chapter does not apply to the  
17 tax year in which the individual dies or to any prior tax year  
18 ending on or after the first day the individual so served in a  
19 combat zone.

20 Sec. 261.685. DISPOSITION OF PROCEEDS. The revenue from  
21 the tax imposed by this chapter shall be deposited as follows:

22 (1) two-thirds of the revenue shall be deposited to  
23 the credit of a special account in the general revenue fund and may  
24 be appropriated only for the purpose of reducing the rate of ad  
25 valorem maintenance and operations taxes levied for the support of  
26 primary and secondary education in the manner provided by Sections  
27 24(h) and (i), Article VIII, Texas Constitution, for the reduction

1 of that rate; and

2 (2) one-third to the credit of the foundation school  
3 fund.

4 SECTION 2. Section 111.201, Tax Code, is amended to read as  
5 follows:

6 Sec. 111.201. ASSESSMENT LIMITATION. (a) No tax imposed by  
7 this title may be assessed after four years from the date that the  
8 tax becomes due and payable except as provided by Subsection (b).

9 (b) A tax imposed by Chapter 261 may not be assessed after  
10 six years from the date the tax becomes due and payable.

11 SECTION 3. A referendum as required by Section 24, Article  
12 VIII, Texas Constitution, on the adoption of the income tax under  
13 this Act shall be submitted to the voters at an election to be held  
14 November 7, 2006. The ballot for the referendum shall be printed to  
15 permit voting for or against the proposition: "The adoption of an  
16 income tax at graduated rates of two percent to six percent for  
17 taxable income in excess of \$100,000."

18 SECTION 4. (a) Except as provided by Subsection (b) of this  
19 section, this Act applies to income earned, accrued, or received on  
20 or after the effective date of this Act.

21 (b) Income, deductions, losses, credits against income, or  
22 other adjustments allowed in determining the amount of tax under  
23 this Act or the amount of federal adjusted gross income under this  
24 Act, including carryovers, are not prohibited in computing the  
25 taxes for a tax period beginning on January 1, 2007, because those  
26 adjustments may have accrued or otherwise originated before the  
27 effective date of this Act.

1           (c) In 2007, the comptroller by rule may suspend the  
2 application of Section 261.506, Tax Code, as added by this Act,  
3 wholly or partly and may extend the deadlines for estimated tax  
4 payments under that section.

5           SECTION 5. (a) Except as provided by Section 6 of this Act,  
6 if the proposition in Section 3 of this Act is approved, this Act  
7 takes effect January 1, 2007.

8           (b) Except as provided by Section 6 of this Act, if the  
9 proposition in Section 3 of this Act is not approved, this Act has  
10 no effect.

11           SECTION 6. Section 3 of this Act takes effect September 1,  
12 2006.