

By: Paxton

H.B. No. 155

A BILL TO BE ENTITLED

AN ACT

relating to the application, computation, and rates of the franchise tax.

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

SECTION 1. Section 171.001(b)(3), Tax Code, is amended to read as follows:

(3) "Corporation" includes:

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

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

(C) a banking corporation; and

(D) any other entity:

(i) that is operated for profit;

(ii) that is operating, organized, or registered under the laws of this state in a manner that provides liability limitations for a person who holds an ownership interest in the entity, including a partner's interest in a partnership; and

(iii) in which any ownership interest is held by an entity other than a natural person, without regard to whether the person that is not a natural person is located in this state or is in any other manner doing business in this state.

SECTION 2. Section 171.001, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) For purposes of Subsection (a), a corporation does

1 business in this state if the corporation is a foreign corporation
2 and is:

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

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

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

12 SECTION 3. Sections 171.002(a) and (d), Tax Code, are
13 amended to read as follows:

14 (a) Subject to Subsection (d), the ~~[The]~~ rates of the
15 franchise tax are:

16 (1) 0.125 ~~[0.25]~~ percent per year of privilege period
17 of net taxable capital; and

18 (2) 2.25 ~~[4.5]~~ percent of net taxable earned surplus.

19 (d) A corporation is subject to a minimum tax of \$50 ~~[not~~
20 ~~required to pay any tax and is not considered to owe any tax]~~ for a
21 period if:

22 (1) the amount of tax computed for the corporation is
23 less than \$50 ~~[\$100]~~; or

24 (2) the amount of the corporation's gross receipts:

25 (A) from its entire business under Section
26 171.105 is less than \$150,000; and

27 (B) from its entire business under Section

1 171.1051, including the amount excepted under Section 171.1051(a),
2 is less than \$150,000.

3 SECTION 4. Section 171.1032(c), Tax Code, is amended to
4 read as follows:

5 (c) A corporation shall include in its gross receipts
6 computed under Subsection (a) the corporation's share of the gross
7 receipts of each partnership and joint venture of which the
8 corporation is a part, whether as a partner in the partnership or
9 joint venture doing business in this state or as a partner in a
10 partnership or joint venture that itself is a partner in any
11 additional partnership or joint venture doing business in this
12 state, apportioned to this state as though the corporation directly
13 earned the receipts, including receipts from business done with the
14 corporation.

15 SECTION 5. Section 171.110, Tax Code, is amended by adding
16 Subsections (m) and (n) to read as follows:

17 (m) Notwithstanding any other provision of this chapter, in
18 determining net taxable earned surplus, payments to related
19 entities for the following purposes are disallowed:

20 (1) intellectual property;

21 (2) interest charges; or

22 (3) management fees.

23 (n) For the purpose of Subsection (m), the comptroller has
24 the same power as the Internal Revenue Service under Section 482,
25 Internal Revenue Code of 1986.

26 SECTION 6. (a) Subject to other provisions of this section,
27 this Act applies to reports originally due on or after the effective

1 date of this Act.

2 (b) For a corporation becoming subject to the franchise tax
3 for the first time under this Act:

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

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

12 (A) beginning on the later of:

13 (i) January 1, 2006; or

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

17 (B) ending on the date the corporation's last
18 accounting period ends in 2006 or, if none, on December 31, 2006;
19 and

20 (3) a corporation subject to the earned surplus
21 component of the franchise tax at any time after August 31, 2006,
22 and before January 1, 2007, but not subject to the earned surplus
23 component on January 1, 2007, shall file a final report computed on
24 net taxable earned surplus, for the privilege of doing business at
25 any time after August 31, 2006, and before January 1, 2007, based on
26 the period:

27 (A) beginning on the later of:

- 1 (i) January 1, 2006; or
2 (ii) the date the corporation was organized
3 in this state or, if a foreign corporation, the date it began doing
4 business in this state; and
5 (B) ending on the date the corporation became no
6 longer subject to the earned surplus component of the tax.

7 SECTION 7. This Act takes effect September 1, 2006.