

Amend CSHB 3 (House Committee Printing), in SECTION 2.01, by adding the following sections to Chapter 251, Tax Code, as added by that SECTION:

Sec. 251.0071. MAXIMUM AND MINIMUM AMOUNTS. (a)

Notwithstanding any other provision of this chapter:

(1) the maximum amount a taxable business is required to pay under this chapter for a calendar quarter, regardless of the amount of wages paid to all employees for a calendar quarter, is equal to eight percent of net taxable earned surplus of the business for the quarter; and

(2) the minimum amount a taxable business is required to pay under this chapter for a calendar quarter, regardless of the amount of wages paid to all employees for a calendar quarter, is the greater of:

(1) 0.6 percent of the base amount of wages for each employee as determined under Section 251.007; or

(2) 4.5 percent of net taxable earned surplus of the business for the quarter.

(b) Net taxable earned surplus is computed for the purpose of Subsection (a) as provided by Sections 251.0072 through 251.0078.

Sec. 251.0072. DETERMINATION OF GROSS RECEIPTS FROM BUSINESS DONE IN THIS STATE FOR TAXABLE EARNED SURPLUS. (a)

Except for the gross receipts of a taxable business that are subject to Section 251.0075, in apportioning taxable earned surplus, the gross receipts of a taxable business from its business done in this state is the sum of the taxable business's receipts from:

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

(2) each service performed in this state;

- (3) each rental of property situated in this state;
- (4) the use of a patent, copyright, trademark, franchise, or license in this state;
- (5) each sale of real property located in this state, including royalties from oil, gas, or other mineral interests;
- (6) each partnership or joint venture to the extent provided by Subsection (c); and
- (7) other business done in this state.

(b) A taxable business shall deduct from its gross receipts computed under Subsection (a) any amount to the extent included under Subsection (a) because of the application of Section 78 or Sections 951-964, Internal Revenue Code, any amount excludable under Section 251.0076, and dividends received from a subsidiary, associate, or affiliated entity that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States.

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

(d) A taxable business that is a transportation company that transports goods or passengers by air shall include in its gross receipts computed under Subsection (a) any intrastate portion or leg of an interstate delivery or trip.

Sec. 251.0073. DETERMINATION OF GROSS RECEIPTS FROM ENTIRE BUSINESS FOR TAXABLE EARNED SURPLUS. (a) Except for the gross receipts of a taxable business that are subject to the provisions of Section 251.0075, in apportioning taxable earned surplus, the gross receipts of a taxable business from its entire business is the sum of the taxable business's receipts from:

- (1) each sale of the taxable business's tangible personal property;
- (2) each service, rental, or royalty;
- (3) each partnership and joint venture as provided by Subsection (d); and

(4) other business.

(b) If a taxable business sells an investment or capital asset, the taxable business's gross receipts from its entire business for taxable earned surplus includes only the net gain from the sale.

(c) A taxable business shall deduct from its gross receipts computed under Subsection (a) any amount to the extent included in Subsection (a) because of the application of Section 78 or Sections 951-964, Internal Revenue Code, any amount excludable under Section 251.0076, and dividends received from a subsidiary, associate, or affiliated entity that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States.

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

Sec. 251.0074. APPORTIONMENT OF TAXABLE EARNED SURPLUS TO THIS STATE. (a) Except as provided by Subsections (b) and (c), a taxable business's taxable earned surplus is apportioned to this state to determine the business's maximum tax liability under Section 251.0071(a)(1) by multiplying the taxable earned surplus by a fraction, the numerator of which is the taxable business's gross receipts from business done in this state, as determined under Section 251.0072, and the denominator of which is the taxable business's gross receipts from its entire business, as determined under Section 251.0073.

(b) A taxable business's taxable earned surplus that is derived, directly or indirectly, from the sale of management, distribution, or administration services to or on behalf of a regulated investment company, including a taxable business that includes trustees or sponsors of employee benefit plans that have accounts in a regulated investment company, is apportioned to this state to determine the business's maximum tax liability under Section 251.0071(a)(1) by multiplying the taxable business's total taxable earned surplus from the sale of services to or on behalf of a regulated investment company by a fraction, the numerator of

which is the average of the sum of shares owned at the beginning of the year and the sum of shares owned at the end of the year by the investment company shareholders who are commercially domiciled in this state or, if the shareholders are individuals, are residents of this state, and the denominator of which is the average of the sum of shares owned at the beginning of the year and the sum of shares owned at the end of the year by all investment company shareholders. The taxable business shall make a separate computation to allocate taxable capital and earned surplus. In this subsection, "regulated investment company" has the meaning assigned by Section 851(a), Internal Revenue Code.

(c) A taxable business's taxable earned surplus that is derived, directly or indirectly, from the sale of management, administration, or investment services to an employee retirement plan is apportioned to this state to determine the business's maximum tax liability under Section 251.0071(a)(1) by multiplying the taxable business's total taxable earned surplus from the sale of services to an employee retirement plan by a fraction, the numerator of which is the average of the sum of beneficiaries domiciled in Texas at the beginning of the year and the sum of beneficiaries domiciled in Texas at the end of the year, and the denominator of which is the average of the sum of all beneficiaries at the beginning of the year and the sum of all beneficiaries at the end of the year. In this section, "employee retirement plan" means a plan or other arrangement that is qualified under Section 401(a), Internal Revenue Code, or satisfies the requirements of Section 403, Internal Revenue Code, or a governmental plan described in Section 414(d), Internal Revenue Code. The term does not include an individual retirement account or individual retirement annuity within the meaning of Section 408, Internal Revenue Code.

(d) A banking corporation shall exclude from the numerator of the bank's apportionment factor interest earned on federal funds and interest earned on securities sold under an agreement to repurchase that are held in this state in a correspondent bank that is domiciled in this state. In this subsection, "correspondent" has the meaning assigned by 12 C.F.R. Section 206.2(c).

(e) Receipts from services that a defense readjustment

project performs in a defense economic readjustment zone are not receipts from business done in this state.

Sec. 251.0075. ALLOCATION OF CERTAIN TAXABLE EARNED SURPLUS TO THIS STATE. An item of income included in a taxable business's taxable earned surplus, except that portion derived from dividends and interest, that a state, other than this state, or a country, other than the United States, cannot tax because the activities generating that item of income do not have sufficient unitary connection with the taxable business's other activities conducted within that state or country under the United States Constitution is allocated to this state if the taxable business's commercial domicile is in this state. Income that can only be allocated to the state of commercial domicile because the income has insufficient unitary connection with any other state or country shall be allocated to this state or another state or country net of expenses related to that income. A portion of a taxable business's taxable earned surplus allocated to this state under this section may not be apportioned under Section 251.0076(a)(2).

Sec. 251.0076. DETERMINATION OF NET TAXABLE EARNED SURPLUS FOR PURPOSE OF MAXIMUM TAX. (a) The net taxable earned surplus of a taxable business for the purpose of determining the business's maximum tax liability under Section 251.0071(a)(1) is computed by:

(1) determining the taxable business's reportable federal taxable income, subtracting from that amount any amount excludable under Subsection (i), any amount included in reportable federal taxable income under Section 78 or Sections 951-964, Internal Revenue Code, and dividends received from a subsidiary, associate, or affiliated corporation that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States, and adding to that amount any compensation of officers or directors, or if a bank, any compensation of directors and executive officers, to the extent excluded in determining federal taxable income to determine the taxable business's taxable earned surplus;

(2) apportioning the taxable business's taxable earned surplus to this state as provided by Section 251.0074 to determine the taxable business's apportioned taxable earned surplus;

(3) adding the taxable business's taxable earned surplus allocated to this state as provided by Section 251.0075; and

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

(b) A corporation's reportable federal taxable income is the corporation's federal taxable income after Schedule C special deductions and before net operating loss deductions as computed under the Internal Revenue Code.

(c) Reportable federal taxable income for a partnership is an amount equal to the sum of:

(1) the partnership's income as an entity as determined under rules adopted by the commission using principles similar to the standards applied to a corporation; and

(2) 20 percent of partner earnings.

(d) Reportable federal taxable income for an entity other than a corporation or partnership is determined under rules adopted by the commission using principles similar to the standards applied to a corporation.

(e) For purposes of this section, a business loss is any negative amount after apportionment and allocation. The business loss shall be carried forward to the year succeeding the loss year as a deduction to net taxable earned surplus, then successively to the succeeding four taxable years after the loss year or until the loss is exhausted, whichever occurs first, but for not more than five taxable years after the loss year. A business loss can be carried forward only by the taxable business that incurred the loss and cannot be transferred to or claimed by any other entity, including the survivor of a merger if the loss was incurred by the taxable business that did not survive the merger.

(f) A taxable business may use either the "first in-first out" or "last in-first out" method of accounting to compute its net taxable earned surplus, but only to the extent that the taxable business used that method on its most recent federal income tax report originally due on or before the date on which the taxable business's franchise tax report is originally due.

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

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

(2) has legal authority to bind the taxable business with third parties by executing contracts or other legal documents.

(h) A taxable business may rebut the presumption described in Subsection (g) that a person is an officer if it conclusively shows, through the person's job description or other documentation, that the person does not participate or have authority to participate in significant policy-making aspects of the corporate operations.

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

(j) In this section:

(1) "Federal obligations" means:

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

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

(2) "Obligation" means any bond, debenture, security, mortgage-backed security, pass-through certificate, or other evidence of indebtedness of the issuing entity. The term does not include a deposit, a repurchase agreement, a loan, a lease, a participation in a loan or pool of loans, a loan collateralized by an obligation of a United States government agency, or a loan guaranteed by a United States government agency.

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

(4) "United States government agency" means an instrumentality of the United States government whose obligations

are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States government. The term includes the Government National Mortgage Association, the Department of Veterans Affairs, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, the Small Business Administration, and any successor agency.

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

Sec. 251.0077. GROSS RECEIPTS FOR TAXABLE EARNED SURPLUS.

(a) For purposes of this section, "gross receipts" means all revenue reportable by a taxable business 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 revenue that is not included in taxable earned surplus. For example, Schedule C special deductions and any amounts subtracted from reportable federal taxable income under Section 251.0076(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 business shall use the same accounting methods to apportion taxable earned surplus as used in computing reportable federal taxable income.

(c) A taxable business 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 commission. A change in accounting methods is not justified solely because it results in a reduction of tax liability.



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

Sec. 251.0078. UNITARY BUSINESS ENTERPRISE. (a) Notwithstanding any other provision of this chapter, in determining the net taxable earned surplus of a taxable business under Section 251.0071, if the taxable business is part of a unitary business enterprise or has an ownership interest in a unitary business enterprise, the taxable business shall file a combined report based on the unitary business enterprise.

(b) The combined report must determine the net taxable earned surplus of the unitary business enterprise as if it were a single business entity.

(c) The taxable earned surplus shall be apportioned as otherwise provided under Section 251.0074, except that gross receipts shall be determined on the basis of the unitary business enterprise. Each taxable business that is part of the unitary business enterprise shall be jointly and severally liable for the net taxable earned surplus of the unitary business as so determined and apportioned.

(d) In this section, "unitary business enterprise" means a single economic enterprise that is made up of a commonly controlled group of business entities that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts.

(e) The comptroller shall adopt rules to implement this section.