

Amend Floor Amendment No. 2 by J. Keffer to **CSHB 3** by striking all the language of the amendment and substituting the following:

Amend **CSHB 3** as follows:

(1) On page 17, strike lines 12-20 and substitute:

Sec. 251.006. ELECTION OF TAXES. (a) Notwithstanding Sections 251.004 and 251.005, a business may elect to pay the tax imposed under this chapter or the tax imposed under Chapter 171. A business that does not have any employees in this state may not elect to pay the tax under this chapter.

(b) The commission, in cooperation with the comptroller, shall promulgate a form for a business to use to make an election under this section.

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

Sec. 251.0061. BUSINESSES WITHOUT EMPLOYEES IN THIS STATE. This chapter does not apply to a business that does not have any employees in this state and the business may not elect under Section 251.006 to pay the tax under this chapter.

Sec. 251.0062. EMPLOYEES. An individual is an employee of a business for purposes of this chapter if the business has a right to direct and control

(2) On page 19, strike lines 2-4 and substitute:

Sec. 251.008. RATE; MINIMUM TAX. (a) The rate of the tax for a corporation that was subject to the franchise tax under Chapter 171 on the effective date of this chapter is equal to the greater of:

(1) 1.15 percent of the base amount of wages for each employee as determined under Section 251.007; or

(2) the amount of the franchise tax paid by the corporation in 2005.

(b) The rate of the tax for an entity other than a corporation is equal to the greater of:

(1) 1.15 percent of the base amount of wages for each employee as determined under Section 251.007; or

(2) 0.50 percent of net taxable earned surplus, as determined under rules adopted by the commission.

(3) Strike SECTIONS 2.02 and 2.03 (page 22, line 13 through page 24, line 26) and substitute:

SECTION 2.021. Section 171.001(a), Tax Code, is amended to read as follows:

(a) Subject to Section 171.0012, a [A] franchise tax is imposed on:

(1) each corporation that does business in this state or that is chartered in this state; and

(2) each limited liability company that does business in this state or that is organized under the laws of this state.

SECTION 2.022. 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;

(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; and

(iv) that has one or more employees in this state.

SECTION 2.023. Section 171.001, Tax Code, is amended by adding Subsection (d) to read as follows:

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

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

(2) holding partnership interest, including interest as an assignee, as a general partner in a limited partnership that

is doing business in this state; or

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

SECTION 2.024. Subchapter A, Chapter 171, is amended by adding Section 171.0012 to read as follow:

Sec. 171.0012. ELECTION OF TAXES. (a) A corporation may elect to pay the tax imposed under this chapter or the tax imposed under Chapter 251. A corporation that does not have any employees in this state and is otherwise subject to the tax imposed under this chapter must pay the tax imposed under this chapter.

(b) The comptroller, in cooperation with the Texas Workforce Commission, shall promulgate a form for a corporation to use to make an election under this section.

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

SECTION 2.025. Section 171.002(d), Tax Code, is amended to read as follows:

(d) A corporation is subject to a minimum tax of \$50 ~~[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 corporation is less than \$50 ~~[\$100]~~; or

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

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

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

SECTION 2.026. Section 171.1032(c), Tax Code, is amended to read as follows:

(c) A corporation shall include in its gross receipts computed under Subsection (a) the corporation's share of the gross receipts of each partnership and joint venture of which the corporation is a part, whether as a partner in the partnership or joint venture doing business in this state or as a partner in a partnership or joint venture that itself is a partner in any

additional partnership or joint venture doing business in this state, apportioned to this state as though the corporation directly earned the receipts, including receipts from business done with the corporation.

SECTION 2.027. Section 171.110, Tax Code, is amended by adding Subsections (m) and (n) to read as follows:

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

(1) intellectual property;

(2) interest charges; or

(3) management fees.

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