

Amend CSHB 3 (Senate committee report) as follows:

(1) Strike SECTIONS 4.04, 4.05, and 4.06 of the bill (page 23, line 47, through page 24, line 64) and substitute:

SECTION 4.04. Subchapter A, Chapter 171, Tax Code, is amended by amending Sections 171.0011 and 171.002 and adding Sections 171.0012, 171.0013, 171.0014, 171.003, and 171.004 to read as follows:

Sec. 171.0011. TAXABLE ENTITY. (a) Except as provided by Subsection (b), "taxable entity" means a general partnership, limited partnership, limited liability partnership, corporation, banking corporation, savings and loan association, limited liability company, trust, business trust, professional association, business association, joint venture, joint stock company, holding company, or other legal entity doing business in this state for profit.

(b) "Taxable entity" does not include a sole proprietorship or 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 was formed, created, or organized before April 30, 2005.

Sec. 171.0012. ELECTION OF RATES. (a) Except as otherwise provided by this section, a taxable entity shall elect to pay the tax imposed under this chapter:

(1) in the amounts and at the rate provided by Section 171.002; or

(2) in the amounts and at the alternate rate provided by Section 171.003.

(b) The election applies to a reporting period and may be changed from one reporting period to the next.

(c) A taxable entity that is in the business of leasing employees:

(1) may not elect to pay the tax imposed under this chapter at the rate provided by Section 171.002 and shall pay the tax imposed under this chapter at the alternate rate provided by Section 171.003; and

(2) for the purposes of this chapter, is considered as having elected to pay the tax imposed under this chapter at the alternate rate provided by Section 171.003.

Sec. 171.0013. MINIMUM TAX LIABILITY. The minimum tax liability for a taxable entity under this chapter is an amount equal to 0.25 percent of the entity's gross receipts from business done in this state under Section 171.1032, including the amounts excepted under Section 171.1032(a).

Sec. 171.0014. ADDITIONAL TAX. (a) An additional tax is imposed on a taxable entity that has elected to pay the tax imposed by this chapter at the rate provided by Section 171.002 and during the period in which that election is in effect [~~corporation that~~] for any reason becomes no longer subject to the earned surplus component of the tax, without regard to whether the taxable entity [~~corporation~~] remains subject to the taxable capital component of the tax, other than through a valid election to pay the tax imposed under this chapter at the alternate rate provided by Section 171.003. An additional tax is imposed on a taxable entity that has elected to pay the tax imposed by this chapter at the alternate rate

provided by Section 171.003 and during the period in which that election is in effect for any reason becomes no longer subject to the tax imposed under this chapter.

(b) The additional tax for an entity that has elected to pay the tax under this chapter at the rate provided by Section 171.002 is equal to 2.5 [4.5] percent of the taxable entity's [corporation's] net taxable earned surplus computed on the period beginning on the day after the last day for which the tax imposed on net taxable earned surplus was computed under Section 171.1532 and ending on the date the taxable entity [corporation] is no longer subject to the earned surplus component of the tax. The additional tax for an entity that has elected to pay the tax under this chapter at the alternate rate provided by Section 171.003 is computed as provided by that section for the period beginning on the day after the last day for which the tax imposed under this chapter was computed at the alternate rate provided by Section 171.003 and ending on the date the taxable entity is no longer subject to the tax.

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

(d) Except as otherwise provided by this section, the provisions of this chapter apply to the tax imposed under this section.

Sec. 171.002. RATES; COMPUTATION OF TAX. (a) The franchise tax for an entity that elects to pay the tax at the rate provided by this section is the greater of:

(1) the amount of the minimum tax liability of the taxable entity under Section 171.0013; or

(2) the amount of franchise tax computed at the rates and in the manner provided by this section.

(a-1) The rates of the franchise tax are, for purposes of Subsection (a)(2):

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

(2) 2.5 [4.5] percent of net taxable earned surplus.

(b) The amount of franchise tax under Subsection (a)(2) 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).

(c) In making a computation under Subsection (b), an amount computed under Subsection (b)(1) or (b)(2) that is zero or less is computed as a zero.

Sec. 171.003. ALTERNATE RATE. The franchise tax for an entity that elects to pay the tax at the alternate rate provided by this section is the greater of:

(1) the amount of the minimum tax liability of the taxable entity under Section 171.0013; or

(2) the lesser of:

(A) 1.75 percent of taxable wages for the taxable entity for the reporting period as determined under Subchapter C-1; or

(B) \$1,500 for each employee for the reporting period as determined under Subchapter C-1.

Sec. 171.004. EXEMPTION FOR CERTAIN SMALL BUSINESSES. [~~(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 \$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.

(2) Strike Section 171.110(a), Tax Code, as amended by SECTION 4.19 of the bill (page 31, lines 6-46) and substitute:

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

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

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

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

(C) [~~7~~, ~~and~~] adding 100 percent of compensation as described by Subsection (m) [~~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 corporation's taxable earned surplus~~]; and

(D) subtracting the lesser of:

(i) 50 percent of the amount of compensation added in Paragraph (C); or

(ii) \$30,000 for each full-time employee and a fractional amount of \$30,000 for each part-time employee proportionate to the extent of the part-time employee's employment;

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

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

(4) subtracting from that amount:

(A) the amount paid to provide health benefits to

employees in this state, provided that the total amount may not exceed the lesser of:

(i) \$150,000; or

(ii) 10 percent of the taxable entity's apportioned taxable earned surplus; and

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

(3) Strike SECTION 4.19A of the bill (page 32, line 41, through page 33, line 20).

(4) In Section 171.1101(a), Tax Code, as added by SECTION 4.20 of the bill (page 33, line 26), strike "171.0013(c)" and substitute "171.0011(c)".

(5) In Section 171.1101(b), Tax Code, as added by SECTION 4.20 of the bill (page 33, line 34), strike "171.0013(c)" and substitute "171.0011(c)".

(6) In Section 171.1102(a), Tax Code, as added by SECTION 4.20 of the bill (page 33, line 48), strike "four" and substitute "2.5".

(7) In Section 171.1102(c), Tax Code, as added by SECTION 4.20 of the bill (page 33, line 65), strike "171.002(a)(2)" and substitute "171.002(a-1)(2)".

(8) Insert a new appropriately numbered SECTION (page 35, between lines 47 and 48) and renumber subsequent SECTIONS accordingly:

SECTION 4.\_\_\_\_. Chapter 171, Tax Code, is amended by adding Subchapter C-1 to read as follows:

SUBCHAPTER C-1. TAXABLE WAGES

Sec. 171.131. TAXABLE WAGES. (a) In this subchapter:

(1) "Employee" means an employee described by Section 171.133 or 171.134.

(2) "Wages" means:

(A) wages as defined under Subchapter F, Chapter 201, Labor Code, paid by a taxable entity and includes the amounts excluded by Sections 201.082(1) and (9), Labor Code; and

(B) wages, to the extent not covered by Paragraph (A), described under Section 171.132.

(b) The taxable wages of a taxable entity are the total amount of wages paid by the entity to all of the entity's employees during the reporting period as provided by Section 171.1533.

Sec. 171.132. LOCATION OF SERVICE. (a) Wages include wages for a service performed in this state or in and outside this state if:

(1) the service is localized in this state; or

(2) the service is not localized in any state and some of the service is performed in this state and:

(A) the base of operations is in this state, or there is no base of operations but the service is directed or controlled from this state; or

(B) the base of operations or place from which the service is directed or controlled is not in a state in which a part of the service is performed, and the residence of the person who performs the service is in this state.

(b) Wages include wages for a service performed anywhere in the United States, including service performed entirely outside this state, if:

(1) the service is not localized in a state;

(2) the service is performed by an individual who is one of a class of employees who are required to travel outside this state in performance of their duties; and

(3) the individual's base of operations is in this state or, if there is no base of operations, the individual's service is directed or controlled from this state.

(c) Wages include wages for a service performed outside the United States by a citizen of the United States.

(d) For the purposes of this section, service is localized in a state if the service is performed entirely within the state or the service performed outside the state is incidental to the service performed in the state. In this section, a service that is "incidental" includes a service that is temporary or that consists of isolated transactions.

Sec. 171.133. FULL-TIME AND PART-TIME EMPLOYEES. (a) In this section, "contribution" has the meaning assigned by Section 201.011, Labor Code.

(b) An individual is an employee if the taxable entity pays or is required to pay a contribution for a reporting period without regard to whether:

(1) the individual is a full-time or part-time employee; or

(2) the wages paid were for the entire reporting period or a portion of the reporting period.

Sec. 171.134. DETERMINATION OF WHETHER CERTAIN INDIVIDUALS ARE EMPLOYEES. An individual is an employee of a taxable entity as provided by this section, without regard to whether the taxable entity pays a contribution, as that term is defined by Section 171.133, for the individual, if the individual provides services in this state to the taxable entity for compensation and the taxable entity has a right to direct and control how the individual performs the services for which the individual is provided compensation, indicated by factors that include:

(1) whether the individual is subject to the taxable entity's instructions about when, where, and how to work;

(2) whether the individual is trained to perform services in a particular manner;

(3) the extent to which the individual has unreimbursed business expenses;

(4) the extent to which the individual has a significant investment in the facilities the individual uses in performing the services;

(5) the extent to which the individual makes the individual's services available to the relevant market by advertising, by maintaining a visible business location, or otherwise;

(6) the extent to which the individual can realize a profit or loss;

(7) the manner in which the individual is paid by the taxable entity;

(8) whether a written contract between the individual and the taxable entity provides that the individual is or is not an employee;

(9) whether the taxable entity provides the individual



with employee-type benefits, including insurance, a pension plan, vacation pay, or sick pay;

(10) whether the relationship between the individual and the taxable entity is considered permanent or for a limited period; and

(11) the extent to which services performed by the individual are a key aspect of the affairs of the taxable entity.

(9) Insert a new appropriately numbered SECTION (page 36, between lines 55 and 56) and renumber subsequent SECTIONS accordingly:

SECTION 4.\_\_\_\_. Subchapter D, Chapter 171, Tax Code, is amended by adding Section 171.1533 to read as follows:

Sec. 171.1533. WAGES ON WHICH TAX ON TAXABLE WAGES IS BASED.

(a) The tax covering the privilege periods included on the initial report, as required by Section 171.153, is based on the taxable wages paid by the taxable entity during the period beginning on the taxable entity's beginning date and:

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

(2) if there is no such period ending date in Subdivision (1), then ending on the day that is the last day of a calendar month and that is nearest to the end of the taxable entity's first year of business.

(b) The tax covering the regular annual period, other than a regular annual period included on the initial report, is based on the taxable wages paid by the taxable entity during the period beginning with the day after the last date on which taxable wages on a previous report was based and ending with its last accounting period ending date for federal income tax purposes in the year before the year in which the report is originally due.

(10) In Section 171.201, Tax Code, as amended by SECTION 4.29 of the bill, strike Subsection (a)(4) (page 37, line 13) and substitute:

(4) a statement declaring the entity's election of rate required under Section 171.0012; and

(5) other information required by the comptroller.

(11) In Section 171.202, Tax Code, as amended by SECTION 4.30 of the bill, strike Subsection (a) (page 37, lines 19-28) and substitute:

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

(1) financial and other information of the taxable entity [~~corporation~~] necessary to compute the tax under this chapter on both the rate provided by Section 171.002 and the alternate rate provided by Section 171.003;

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

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

(4) a statement declaring the entity's election of rate under Section 171.0012 for the reporting period; and

(5) other information required by the comptroller.

(12) Insert a new appropriately numbered SECTION (page 38, between lines 5 and 6) and renumber subsequent SECTIONS accordingly:

SECTION 4.\_\_\_\_. Section 171.202(d), Tax Code, is amended to read as follows:

(d) In the case of a taxpayer whose previous return was its initial report, the optional payment provided under Subsection (c)(2)(B) or (e)(2)(B) must be equal to the greatest [~~greater~~] of:

(1) an amount produced by multiplying the net taxable capital, as reported on the initial report filed on or before May 14, by the rate of tax in Section 171.002(a-1)(1) [~~171.002(a)(1)~~] that is effective January 1 of the year in which the report is due; [~~or~~]

(2) an amount produced by multiplying the net taxable earned surplus, as reported on the initial report filed on or before May 14, by the rate of tax in Section 171.002(a-1)(2) [~~171.002(a)(2)~~] that is effective January 1 of the year in which the report is due; or

(3) an amount produced by multiplying taxable wages, as reported on the initial report filed on or before May 14, by the

rate of tax in Section 171.003 that is effective January 1 of the year in which the report is due.

(13) In Section 171.204(b), Tax Code, as amended by SECTION 4.32 of the bill (page 38, line 27), strike "171.002(d)(2)" and substitute "171.004(2) [~~171.002(d)(2)~~]".

(14) Insert a new appropriately numbered SECTION (page 39, between lines 13 and 14) and renumber subsequent SECTIONS accordingly:

SECTION 4.\_\_\_\_. Subchapter E, Chapter 171, Tax Code, is amended by adding Section 171.213 to read as follows:

Sec. 171.213. ACCESS TO TEXAS WORKFORCE COMMISSION REPORTS. The comptroller shall have full access to reports filed by a taxable entity on wages paid with the Texas Workforce Commission.

(15) Insert a new appropriately numbered SECTION (page 40, between lines 18 and 19) and renumber subsequent SECTIONS accordingly:

SECTION 4.\_\_\_\_. Subchapter H, Chapter 171, Tax Code, is amended by adding Sections 171.364-171.366 to read as follows:

Sec. 171.364. TAX NOT DEDUCTED FROM WAGES. A taxable entity may not deduct the tax imposed under this chapter from any wages of the taxable entity's employees.

Sec. 171.365. CRIMINAL PENALTY. (a) A person who violates Section 171.364 commits an offense.

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

Sec. 171.366. CIVIL PENALTY. (a) A person who violates Section 171.364 is liable to the state for a civil penalty not to exceed \$500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the comptroller, the attorney general shall file suit to collect a penalty under this section.

(16) Strike SECTIONS 4.48 and 4.49 of the bill (page 41, lines 2-31).

(17) Strike SECTION 4.53 of the bill (page 42, lines 24-53).

(18) Renumber SECTIONS as appropriate.