

By: Eissler

H.B. No. 28

A BILL TO BE ENTITLED

AN ACT

relating to state taxes; imposing penalties.

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

ARTICLE 1. TEXAS EDUCATION BUSINESS ACTIVITY TAX

SECTION 1.01. Subtitle F, Title 2, Tax Code, is amended by adding Chapter 172 to read as follows:

CHAPTER 172. TEXAS EDUCATION BUSINESS ACTIVITY TAX

SUBCHAPTER A. DEFINITIONS

Sec. 172.001. AFFILIATED GROUP. "Affiliated group" means two or more corporations, one of which owns or controls, directly or indirectly, 80 percent or more of the capital stock with voting rights of the other corporation or corporations.

Sec. 172.002. BUSINESS ACTIVITY. (a) "Business activity" means an activity:

(1) that is:

(A) a transfer of legal or equitable ownership of or the right of possession of property; or

(B) the performance of services; and

(2) that occurs in this state, without regard to whether the activity is in interstate or foreign commerce.

(b) The term does not include:

(1) an activity by an individual that is not for the economic gain, benefit, or advantage of the individual or others;

(2) a service rendered by an employee to an employer;

- 1           (3) a service as a director of a corporation;
- 2           (4) income derived from individual investment; or
- 3           (5) a casual transaction.

4           (c) A transaction that otherwise is excluded under  
5 Subsection (b), but that is made or engaged in by a person and that  
6 is incidental to the person's regular business activity, is a  
7 business activity.

8           Sec. 172.003. CASUAL TRANSACTION. "Casual transaction"  
9 means a transaction made or engaged in other than in the ordinary  
10 course of repeated and successive transactions of a like character,  
11 except that a transaction made or engaged in by a person that is  
12 incidental to that person's regular business activity is considered  
13 to be a business activity.

14           Sec. 172.004. EMPLOYEE. (a) "Employee" means an employee  
15 as defined in Section 3401(c), Internal Revenue Code.

16           (b) A person from whom an employer is required to withhold  
17 for federal income tax purposes is presumed to be an employee.

18           Sec. 172.005. EMPLOYER. (a) "Employer" means an employer  
19 as defined in Section 3401(d), Internal Revenue Code.

20           (b) A person required to withhold for federal income tax  
21 purposes is presumed to be an employer.

22           Sec. 172.006. FEDERAL TAXABLE INCOME. "Federal taxable  
23 income" means taxable income as defined in Section 63, Internal  
24 Revenue Code.

25           Sec. 172.007. FINANCIAL ORGANIZATION. "Financial  
26 organization" means a bank, industrial bank, trust company, bank  
27 holding company as defined in 12 U.S.C. Section 1841, credit union,

1 safety and collateral deposit company, regulated investment  
2 company as defined in the Internal Revenue Code, or any other joint  
3 stock company or corporation at least 90 percent of whose assets  
4 consist of intangible personal property and at least 90 percent of  
5 whose gross receipts income consists of dividends or interest or  
6 other charges resulting from the use of money or credit.

7 Sec. 172.008. GROSS RECEIPTS. (a) "Gross receipts" means  
8 the sum of the gross receipts from sales and from the rental of  
9 property.

10 (b) The term does not include:

11 (1) a payment from an insurance carrier to an insured  
12 for property damage or personal injury; or

13 (2) an amount received in an agency or other  
14 representative capacity solely on behalf of another.

15 (c) The term includes an amount received by a person having  
16 the power or authority to expend or otherwise appropriate the  
17 amount in payment for or in consideration of sales or services made  
18 or rendered by the person or by another acting under the person's  
19 direction and control or by a fiduciary, including a guardian,  
20 executor, administrator, receiver, conservator, or trustee, other  
21 than a trustee of taxes received or collected from others under  
22 direction of the laws of the federal government or of any foreign,  
23 state, or local government.

24 Sec. 172.009. INDIVIDUAL INVESTMENT. "Individual  
25 investment" means investment by an individual:

26 (1) of funds owned by the individual solely for the  
27 benefit of the individual if the investment is not made in

1 connection with another activity that is a business activity; or  
2 (2) of funds owned by the individual's relative within  
3 the third degree of consanguinity or the second degree of affinity,  
4 as those relationships are described by Subchapter B, Chapter 573,  
5 Government Code, on behalf of and solely for the benefit of the  
6 owner of the funds if the investment is not made in connection with  
7 another activity that is a business activity.

8 Sec. 172.010. INTERNAL REVENUE CODE. "Internal Revenue  
9 Code" means the Internal Revenue Code of 1986 in effect on January  
10 1, 2004.

11 Sec. 172.011. RENT. "Rent" includes a lease payment or  
12 other payment for the use of any property to which the taxpayer does  
13 not otherwise have legal or equitable title.

14 Sec. 172.012. SALE. "Sale" means a transaction from which  
15 the gross receipts constitute consideration:

16 (1) for the transfer of title to, or possession of,  
17 property:

18 (A) that is stock in trade;

19 (B) that is of a kind that would properly be  
20 included in the inventory of the taxpayer if on hand at the close of  
21 the tax period; or

22 (C) that is held by the taxpayer primarily for  
23 sale to customers in the ordinary course of its trade or business;

24 (2) for the performance of services that constitute  
25 business activities other than those included in Subdivision (1);  
26 or

27 (3) from any combination of gross receipts included in

1 Subdivision (1) or (2).

2 Sec. 172.013. STATE. "State" means any state of the United  
3 States, the District of Columbia, the Commonwealth of Puerto Rico,  
4 any territory or possession of the United States, and any foreign  
5 country, or a political subdivision of any of those entities.

6 Sec. 172.014. TANGIBLE ASSETS. "Tangible assets" means  
7 tangible assets of a type that are, or, under the Internal Revenue  
8 Code, will become, eligible for depreciation or amortization for  
9 federal income tax purposes.

10 Sec. 172.015. TAX. "Tax" includes interest and penalties  
11 unless the intention to give it a more limited meaning is indicated  
12 by its context.

13 Sec. 172.016. TAXPAYER. "Taxpayer" means a person liable  
14 for a tax, interest, or a penalty under this chapter. The term  
15 refers to the individuals who own an interest in an unincorporated  
16 association, joint venture, partnership, or other entity not having  
17 the legal status of a person.

18 Sec. 172.017. TAX YEAR. (a) "Tax year" means the calendar  
19 year or the fiscal year ending during the calendar year for which  
20 the tax base is computed under this chapter.

21 (b) If a return is made for a fractional part of a year, the  
22 term means the period for which the return is made.

23 (c) Except for the first return required by this chapter, a  
24 taxpayer's tax year is the same period as that covered by the  
25 taxpayer's federal income tax return.

26 Sec. 172.018. UNRELATED BUSINESS ACTIVITY. "Unrelated  
27 business activity" means any business activity that gives rise to

1 unrelated taxable income as defined in the Internal Revenue Code.

2 [Sections 172.019-172.100 reserved for expansion]

3 SUBCHAPTER B. IMPOSITION OF TAX

4 Sec. 172.101. TAX IMPOSED. There is imposed a tax on every  
5 person having a business activity in this state that is allocated or  
6 apportioned to this state.

7 Sec. 172.102. TAX RATE. The tax imposed by this chapter is  
8 at the rate of one percent of the taxpayer's adjusted tax base.

9 Sec. 172.103. DETERMINATION OF TAX BASE. (a) A taxpayer  
10 determines the tax base by computing the amount of total revenue  
11 received by the taxpayer during the tax year, which is the sum of  
12 revenue from:

13 (1) gross receipts;

14 (2) interest;

15 (3) dividends derived from obligations or securities;

16 (4) royalties; and

17 (5) the sale or other disposition of tangible assets  
18 that are physically located in this state.

19 (b) A financial organization shall:

20 (1) in determining the interest component of its tax  
21 base under Subsection (a)(2), include only net interest earned; and

22 (2) in determining the sale or other disposition of  
23 tangible assets under Subsection (a)(5), include only those assets  
24 directly used to provide financial services.

25 Sec. 172.104. DETERMINATION OF ADJUSTED TAX BASE. (a) A  
26 taxpayer determines the adjusted tax base by determining the tax  
27 base as provided in Section 172.103 and making adjustments in the

1 following order:

2 (1) deducting any income derived from a nonbusiness  
3 activity listed in Section 172.002(b);

4 (2) deducting the cost of the purchase of any property  
5 of a kind that would properly be included in the inventory of the  
6 taxpayer during the tax year;

7 (3) deducting the cost of services purchased during  
8 the tax year for the performance of the taxpayer's business  
9 activities;

10 (4) apportioning the tax base as provided in  
11 Subchapter C; and

12 (5) deducting the cost, including the cost of  
13 fabrication and installation, paid or accrued in the tax year of  
14 tangible assets that are physically located in this state.

15 (b) A financial organization shall deduct the cost paid or  
16 accrued in the tax year of a tangible asset that is physically  
17 located in this state only if the tangible asset is directly used  
18 to provide financial services.

19 [Sections 172.105-172.200 reserved for expansion]

20 SUBCHAPTER C. ALLOCATION AND APPORTIONMENT OF TAX BASE

21 Sec. 172.201. BUSINESS ACTIVITIES CONFINED TO TEXAS. The  
22 entire tax base of a taxpayer whose business activity is confined  
23 solely to this state is allocated to this state.

24 Sec. 172.202. BUSINESS ACTIVITIES IN TEXAS AND ELSEWHERE.  
25 A taxpayer whose business activity is taxable both in and outside  
26 this state shall apportion the taxpayer's tax base as provided by  
27 this subchapter.

1       Sec. 172.203. TAXABLE IN ANOTHER STATE. For purposes of  
2 apportionment of the tax base from business activity under this  
3 subchapter, a taxpayer is taxable in another state if:

4           (1) in that state the taxpayer is subject to a business  
5 privilege tax, net income tax, franchise tax measured by net  
6 income, franchise tax for the privilege of doing business,  
7 corporate stock tax, or tax of the type imposed by this chapter; or

8           (2) that state has jurisdiction to subject the  
9 taxpayer to one or more of the taxes without regard to whether the  
10 state does so.

11       Sec. 172.204. APPORTIONMENT FACTOR. All of the tax base,  
12 other than the tax base derived principally from financial services  
13 or specifically allocated, is apportioned to this state by  
14 multiplying the tax base by the sales factor.

15       Sec. 172.205. SALES FACTOR. (a) The sales factor is a  
16 fraction, the numerator of which is the total sales of the taxpayer  
17 in this state during the tax year, and the denominator of which is  
18 the total sales of the taxpayer during the tax year.

19           (b) A sale of tangible personal property is in this state  
20 if:

21           (1) the property is shipped or delivered to a  
22 purchaser, other than the United States government, in this state  
23 without regard to the free-on-board point or other conditions of  
24 the sale; or

25           (2) the property is shipped from an office, store,  
26 warehouse, factory, or other place of storage in this state and the  
27 purchaser is the United States government or the taxpayer is not

1 taxable in the state of the purchaser.

2 (c) For the purposes of Subsection (b)(2) only, "state" does  
3 not include a foreign country.

4 (d) A sale, other than a sale of tangible personal property,  
5 is in this state if:

6 (1) the business activity is performed in this state;  
7 or

8 (2) the business activity is performed both in and  
9 outside this state and, based on costs of performance, a greater  
10 proportion of the business activity is performed in this state than  
11 is performed outside this state.

12 (e) Receipts derived from a service performed for planning,  
13 design, or construction activities in this state are considered  
14 receipts from a sale of service in this state.

15 Sec. 172.206. APPORTIONMENT: FINANCIAL ORGANIZATIONS. (a)  
16 The tax base of a financial organization attributable to sources in  
17 this state is:

18 (1) the entire tax base of a taxpayer whose business  
19 activities are confined solely to this state; or

20 (2) for a taxpayer whose business activities are  
21 conducted partially in and partially outside this state, a  
22 percentage of its tax base equal to the percentage of its gross  
23 business during the period covered by its return that is done in  
24 this state.

25 (b) Gross business includes the sum of:

26 (1) fees, commissions, or other compensation for  
27 financial services;

1           (2) gross profits from trading in stocks, bonds, or  
2 other securities;

3           (3) interest charged to customers for carrying debit  
4 balances of margin accounts, without deduction of any costs  
5 incurred in carrying the accounts;

6           (4) interest and dividends received; and

7           (5) any other gross income resulting from the  
8 operation as a financial organization.

9           [Sections 172.207-172.250 reserved for expansion]

10                           SUBCHAPTER D. EXEMPTIONS

11           Sec. 172.251. EXEMPTION: GOVERNMENTAL ENTITIES. There are  
12 exempted from the taxes imposed by this chapter the United States,  
13 this state and other states, and agencies, political subdivisions,  
14 and enterprises of the United States, this state, and other states.

15           Sec. 172.252. EXEMPTION: NONPROFIT ENTITIES. There is  
16 exempted from the taxes imposed by this chapter any entity that is  
17 exempt from federal income tax under Section 501(a), Internal  
18 Revenue Code, by being listed as an exempt organization in Section  
19 501(c)(3) or 501(c)(4) of the code.

20           [Sections 172.253-172.300 reserved for expansion]

21                           SUBCHAPTER E. TAX RETURNS AND PAYMENTS

22           Sec. 172.301. ESTIMATED TAX RETURNS. (a) A taxpayer who  
23 reasonably expects liability for the tax year to exceed \$500 shall  
24 file an estimated return and pay an estimated tax for each quarter  
25 of the taxpayer's tax year.

26           (b) For a taxpayer whose tax year is the calendar year, the  
27 quarterly returns and estimated payments shall be made on or before

1 April 30, July 31, October 31, and January 31. A taxpayer whose tax  
2 year is not the calendar year shall file quarterly returns and make  
3 estimated payments on or before the due dates that in the taxpayer's  
4 fiscal year correspond to the calendar year dates provided by this  
5 subsection.

6 (c) The estimated payment made with each quarterly return of  
7 each tax year is for the estimated tax base for the quarter or  
8 one-fourth of the estimated annual liability. The second, third,  
9 and fourth estimated payments in each tax year shall include  
10 adjustments, if necessary, to correct underpayments or  
11 overpayments from previous quarterly payments in the tax year to a  
12 revised estimate of the annual tax liability.

13 (d) The comptroller may not assess interest for tax that is  
14 delinquent if:

15 (1) the sum of the estimated payments equals at least  
16 85 percent of the liability or one percent of the gross receipts for  
17 the tax year and the amount of each estimated payment reasonably  
18 approximates the tax liability incurred during the quarter for  
19 which the estimated payment was made; or

20 (2) the preceding year's tax liability was \$10,000 or  
21 less and the taxpayer submitted four equal installments the sum of  
22 which equals the previous year's tax liability.

23 (e) A taxpayer shall make each estimated return on a form  
24 prescribed by the comptroller and shall include an estimate of the  
25 annual tax liability and other information required by the  
26 comptroller. The form may be combined with any other tax reporting  
27 form prescribed by the comptroller.

1       (f) A taxpayer who files an estimated tax return for the  
2 taxpayer's first tax year of less than 12 months shall pay amounts  
3 with each return that are proportional to the number of payments  
4 made in the first tax year.

5       (g) Payments made under this section are a credit against  
6 the payment required with the annual tax return.

7       (h) The comptroller may require filing of the returns and  
8 payment of the tax for other than quarterly or annual periods if the  
9 comptroller considers it necessary to ensure payment of the tax or  
10 to provide a more efficient administration of the tax.

11       (i) A taxpayer who elects under the Internal Revenue Code to  
12 file an annual federal income tax return by March 1 in the year  
13 following the taxpayer's tax year and does not make a quarterly  
14 estimate or payment, or does not make a quarterly estimate or  
15 payment and files a tentative annual return with a tentative  
16 payment by January 15 in the year following the taxpayer's tax year  
17 and a final return by April 15 in the year following the taxpayer's  
18 tax year, has the same option in filing the estimated and annual  
19 returns required by this chapter.

20       (j) Instead of the quarterly return prescribed by  
21 Subsections (a) and (b), the taxpayer may elect either of the  
22 following options:

23               (1) to file and pay before the 16th day of each month  
24 an estimated return computed at the rate of one percent of the gross  
25 receipts for the preceding month; or

26               (2) to file and pay before the 16th day of the months  
27 specified by Subsection (b) an estimated return computed at the

1 rate of one percent of the gross receipts for the preceding quarter.

2 Sec. 172.302. RETURN FOR FIRST TAX YEAR. A taxpayer may  
3 elect to compute the tax for the first tax year, if less than 12  
4 months, in accordance with one of the following:

5 (1) the taxpayer may determine the amount of the tax as  
6 if this chapter were effective on the first day of the taxpayer's  
7 annual accounting period and multiply the amount by a fraction, the  
8 numerator of which is the number of months in the taxpayer's first  
9 tax year, and the denominator of which is 12; or

10 (2) the taxpayer may determine the amount of the tax by  
11 determining the tax base in the first tax year in accordance with an  
12 accounting method, satisfactory to the comptroller, that reflects  
13 the actual tax base attributable to the period.

14 Sec. 172.303. ANNUAL TAX RETURN. (a) A taxpayer shall file  
15 an annual or final return with the comptroller, in the form and  
16 content prescribed by the comptroller, on or before the last day of  
17 the fourth month after the end of the taxpayer's tax year. A  
18 taxpayer shall pay any final tax liability with the return.

19 (b) The comptroller, on application of the taxpayer and for  
20 good cause shown, may extend the date for filing the annual return.  
21 Interest at the rate that applies to delinquent taxes under Section  
22 111.060 shall be added to the amount of the tax unpaid for the  
23 period of the extension. The comptroller shall require a  
24 preliminary return and payment of the estimated tax.

25 Sec. 172.304. FILING OF FEDERAL TAX RETURNS. A taxpayer  
26 required to file a return under this chapter may be required to  
27 furnish a copy of any return or portion of any return that the

1 taxpayer has filed under the Internal Revenue Code.

2 Sec. 172.305. RETURNS OF ENTITIES OTHER THAN CORPORATIONS  
3 OR LIMITED LIABILITY COMPANIES. (a) A taxpayer who does not report  
4 as a corporation or a limited liability company shall report as an  
5 individual in a single report under this chapter and pay the tax for  
6 each separately identifiable business activity or business entity  
7 in which the person is engaged, showing the person's distributive  
8 share of revenue described by Section 172.103, adjustments to that  
9 revenue, adjusted tax base, and tax for each separate activity and  
10 entity.

11 (b) Each owner of an entity or a business activity in which  
12 general liability is not otherwise limited by law is jointly and  
13 severally liable for the amount of the taxes imposed by this chapter  
14 on the entity or business activity. An entity may withhold payment  
15 of dividends, profits, or other distributions to an owner,  
16 including an owner whose general liability is otherwise limited,  
17 who has not paid the taxes due under this chapter before the date  
18 the tax is delinquent in an amount equal to the delinquency,  
19 including penalties and interest, and may pay the tax for that  
20 individual in satisfaction of any tax obligation arising from the  
21 business activity.

22 (c) The distributive share of ownership of an owner of a  
23 business activity or entity for this section is the share to which,  
24 under the agreement of the owners of the business activity or  
25 entity, the individual is entitled. In the absence of sufficient  
26 evidence to establish ownership under an agreement, the share of  
27 ownership of an owner is presumed to be, at the election of the

1 comptroller:

2 (1) equal to the share of that owner's contribution of  
3 capital to the activity or entity; or

4 (2) a share equal to each other owner's.

5 Sec. 172.306. CONSOLIDATED OR COMBINED RETURNS. (a) The  
6 comptroller may require or permit the filing of a consolidated or  
7 combined return by an affiliated group of corporations if:

8 (1) all members of the affiliated group are taxpayers  
9 or have business activity in this state;

10 (2) each member of the affiliated group maintains a  
11 relationship with one or more members of the group that includes  
12 intercorporate transactions of a substantial nature other than  
13 control, ownership, or financing arrangements, or any combination  
14 of these; and

15 (3) the business activities of each member of the  
16 affiliated group are subject to apportionment by a specific  
17 apportionment formula provided by this chapter that also applies to  
18 all other members of the affiliated group and would be applicable to  
19 each member even if it were not a member of the affiliated group.

20 (b) Except as expressly provided by this section, this  
21 subchapter does not permit or require the filing of a consolidated  
22 or combined return or a consolidation or combination of the tax base  
23 or apportionment factors of two or more entities.

24 Sec. 172.307. INFORMATION RETURNS. The comptroller by rule  
25 may require, at the time and in the manner specified by rule, the  
26 filing of an information return of any person who has business  
27 activity in or allocated to this state.

1           [Sections 172.308-172.350 reserved for expansion]

2           SUBCHAPTER F. ADMINISTRATION, COLLECTION, AND ENFORCEMENT

3           Sec. 172.351. RECORDS; CRIMINAL PENALTY. (a) A person  
4 liable for a tax imposed by this chapter shall keep and maintain  
5 accurate records in a form that makes it possible to determine the  
6 tax due under this chapter.

7           (b) The records must be open for examination by the  
8 comptroller at any time during regular business hours of the  
9 taxpayer.

10          (c) A person who intentionally or knowingly violates this  
11 section commits an offense. An offense under this section is a  
12 Class B misdemeanor.

13          Sec. 172.352. FAILURE TO MAKE RETURN; CRIMINAL PENALTY.

14          (a) A person who knowingly fails or refuses to make a return  
15 required by this chapter commits an offense.

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

18          Sec. 172.353. DISSOLUTION OF CORPORATION AND SALE OF  
19 BUSINESS. (a) The secretary of state shall withhold the issuance  
20 of any certificate of dissolution or withdrawal in the case of any  
21 corporation organized under the laws of this state or organized  
22 under the laws of another state and admitted to do business in this  
23 state until notified by the comptroller that all taxes imposed by  
24 this chapter against the corporation are paid, or until notified by  
25 the comptroller that the applicant is not indebted for any taxes by  
26 reason of payment or indemnification.

27          (b) If a person liable for a tax imposed by this chapter

1 sells out the person's business or stock of goods or ceases business  
2 activity, the person's successor or succeeding successors shall  
3 withhold an amount of the purchase money sufficient to satisfy the  
4 amount of tax that may be due and unpaid until the former owner  
5 produces a certificate from the comptroller stating that a tax is  
6 not due. A successor who fails to withhold purchase money is  
7 personally liable for any tax accruing because of the business of  
8 the former owner.

9 Sec. 172.354. RECIPROCAL AGREEMENTS. The comptroller may  
10 enter into reciprocal agreements with the United States Department  
11 of the Treasury or taxing officials of other states or nations for  
12 the enforcement, collection, and exchange of data in connection  
13 with the administration of this chapter.

14 [Sections 172.355-172.400 reserved for expansion]

15 SUBCHAPTER G. DISPOSITION OF REVENUE

16 Sec. 172.401. TEXAS SCHOOL TRUST FUND. The revenue from the  
17 tax imposed by this chapter shall be deposited to the credit of the  
18 Texas school trust fund.

19 [Sections 172.402-172.450 reserved for expansion]

20 SUBCHAPTER H. PASS-THROUGH

21 Sec. 172.451. DEFINITIONS. In this subchapter, "sale" and  
22 "taxable item" have the meanings assigned those terms by Subchapter  
23 A, Chapter 151.

24 Sec. 172.452. PASS-THROUGH. A taxpayer that has gross  
25 receipts from the sale of a taxable item may pass through the tax  
26 under this chapter to the consumer of the taxable item as a sales  
27 tax in the manner provided by this subchapter.

1       Sec. 172.453. AMOUNT OF PASS-THROUGH TAX. (a) The amount  
2 of the pass-through tax is one percent of the sales price of the  
3 taxable item.

4       (b) The tax under this section is in addition to any other  
5 tax under this code.

6       (c) Notwithstanding any other provision of this chapter,  
7 the amount of the pass-through tax may not exceed the amount of the  
8 tax that the taxpayer would be liable for under this chapter if the  
9 taxpayer did not use the pass-through tax. The comptroller shall  
10 adopt rules to implement this subsection, including the  
11 implementation of a rate for the pass-through tax that is less than  
12 one percent.

13       Sec. 172.454. COLLECTION, ADMINISTRATION, AND ENFORCEMENT.  
14 For purposes of collection, administration, and enforcement of the  
15 tax under this subchapter, the tax is the same as a sales tax  
16 imposed under Chapter 151.

17       Sec. 172.455. GROSS RECEIPTS ADJUSTMENT. (a) A taxpayer  
18 that passes through the tax on taxable items in the manner provided  
19 by this subchapter may deduct the gross receipts from the sale of  
20 those taxable items from the gross receipts the taxpayer uses to  
21 compute its tax base under Section 172.103.

22       (b) The taxpayer may not deduct gross receipts from the sale  
23 of any item:

24               (1) other than a taxable item described in Subsection  
25 (a); or

26               (2) sold at the same time as a taxable item described  
27 in Subsection (a) and appearing on the same invoice or receipt as

1 the taxable item but that is not a taxable item.

2 Sec. 172.456. IDENTIFICATION OF PASS-THROUGH TAX. The  
3 taxpayer may separately identify the pass-through tax paid by a  
4 consumer on a taxable item on the invoice or receipt given to the  
5 consumer, including as the "Texas Education Business Activity Tax."

6 SECTION 1.02. This article takes effect January 1, 2006.

7 ARTICLE 2. REPEAL OF FRANCHISE TAX

8 SECTION 2.01. (a) Chapter 171, Tax Code, is repealed  
9 January 1, 2006.

10 (b) Chapter 171, Tax Code, and Subtitle B, Title 2, Tax  
11 Code, continue to apply to audits, deficiencies, redeterminations,  
12 and refunds of any tax due or collected under Chapter 171 until  
13 barred by limitations.

14 (c) The repeal of Chapter 171, Tax Code, does not affect:

15 (1) the status of a corporation that has had its  
16 corporate privileges, certificate of authority, or corporate  
17 charter revoked, suit filed against it, or a receiver appointed  
18 under Subchapter F, G, or H of that chapter;

19 (2) the ability of the comptroller, secretary of  
20 state, or attorney general to take action against a corporation  
21 under Subchapter F, G, or H of that chapter for actions that took  
22 place before the repeal; or

23 (3) the right of a corporation to contest a  
24 forfeiture, revocation, lawsuit, or appointment of a receiver under  
25 Subchapter F, G, or H of that chapter.

26 (d) Any corporation that is subject to the franchise tax  
27 imposed by Chapter 171, Tax Code, before the date of its repeal

1 shall pay an additional tax equal to 4.5 percent of the  
2 corporation's net taxable earned surplus computed on the period  
3 beginning on the day after the last day for which the tax imposed on  
4 net taxable earned surplus was computed under Section 171.1532, Tax  
5 Code, and ending on December 31, 2005. The comptroller by rule shall  
6 provide for the payment of tax due for an initial or second period  
7 that does not expire before January 1, 2006. A franchise tax return  
8 is not required for any initial or second period as described by  
9 Chapter 171, Tax Code, that begins on or after January 1, 2006.

10 ARTICLE 3. SALES TAX

11 SECTION 3.01. Section 151.051(b), Tax Code, is amended to  
12 read as follows:

13 (b) The sales tax rate is 7.25 [~~6-1/4~~] percent of the sales  
14 price of the taxable item sold.

15 SECTION 3.02. This article takes effect January 1, 2006.

16 ARTICLE 4. EFFECTIVE DATE

17 SECTION 4.01. Except as otherwise provided by this Act,  
18 this Act takes effect January 1, 2006.