

By: Dunnam

H.B. No. 1401

A BILL TO BE ENTITLED

AN ACT

relating to the application of the franchise tax.

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

SECTION 1. Subchapter A, Chapter 171, Tax Code, is amended by adding Section 171.003 to read as follows:

Sec. 171.003. APPLICABILITY OF FRANCHISE TAX. (a) This section applies only to an entity that is not defined as a corporation by Section 171.001(b)(3) but:

(1) that is operated for profit;

(2) 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

(3) 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.

(b) An entity to which this section applies is subject to the franchise tax under this chapter in the manner provided by this section.

(c) The net taxable capital of the entity is computed by:

(1) adding the entity's capital accounts, undistributed profits, and surplus to determine the entity's taxable capital;

1           (2) apportioning the entity's taxable capital to this  
2 state as provided by Section 171.106 to determine the entity's  
3 apportioned taxable capital; and

4           (3) subtracting from the amount computed under  
5 Subdivision (2) any other allowable deductions to determine the  
6 entity's net taxable capital.

7           (d) For purposes of Subsection (c)(1), an amount that  
8 belongs to or is included in the entity's capital accounts,  
9 undistributed profits, or surplus is excluded if the amount has  
10 been added once under that subsection in determining the entity's  
11 taxable capital.

12           (e) The net taxable earned surplus of the entity is  
13 determined as provided by Section 171.110 if the entity is not a  
14 partnership. If the entity is a partnership, the net taxable earned  
15 surplus of the entity is computed by:

16           (1) determining the partnership's reportable federal  
17 taxable income and making the following adjustments:

18                   (A) subtracting any taxable income of a partner  
19 who is a natural person;

20                   (B) subtracting dividends received from a  
21 subsidiary, associate, or affiliated corporation that does not  
22 transact a substantial portion of its business or regularly  
23 maintain a substantial portion of its assets in the United States;  
24 and

25                   (C) adding any compensation of each officer or  
26 director who owns 0.1 percent or more of the partnership, to the  
27 extent excluded in determining reportable federal taxable income;

1           (2) apportioning the partnership's taxable earned  
2 surplus to this state as provided by Section 171.106 to determine  
3 the partnership's apportioned taxable earned surplus;

4           (3) adding the partnership's taxable earned surplus  
5 allocated to this state as provided by Section 171.1061; and

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

9           (f) For purposes of Subsection (e)(1):

10           (1) an amount may not be subtracted from reportable  
11 federal taxable income more than once; and

12           (2) an amount may not be added to reportable federal  
13 taxable income more than once.

14           (g) For purposes of this section, a business loss is any  
15 negative amount after apportionment and allocation. The business  
16 loss shall be carried forward to the year succeeding the loss year  
17 as a deduction to net taxable earned surplus, then successively to  
18 the succeeding four taxable years after the loss year or until the  
19 loss is exhausted, whichever occurs first, but for not more than  
20 five taxable years after the loss year. Notwithstanding the  
21 preceding sentence, a business loss incurred before January 1,  
22 2005, may not be used to reduce net taxable earned surplus.

23           (h) Notwithstanding any other provision of this section, to  
24 the extent that the net income of natural persons, including a  
25 person's share of partnership and unincorporated association  
26 income, may not be taxed as provided by Section 24, Article VIII,  
27 Texas Constitution, the income is not included in net taxable

1 earned surplus and is not subject to the tax imposed under this Act.

2 SECTION 2. (a) Subject to Subsection (b) of this section,  
3 the changes made by this section take effect for initial, annual, or  
4 final franchise tax reports originally due on or after January 1,  
5 2006.

6 (b) For an entity becoming subject to the franchise tax  
7 under this section:

8 (1) income or losses occurring before January 1, 2005,  
9 may not be considered for purposes of the earned surplus component;

10 (2) for entities in existence on January 1, 2005, that  
11 would have been subject to the franchise tax had this Act been in  
12 effect on January 1, 2005, the first report due under this Act will  
13 be either a final report, if applicable, or an annual report due May  
14 15, 2006; and

15 (3) for entities that would have become subject to the  
16 franchise tax after January 1, 2005, had this Act been in effect on  
17 January 1, 2005, the first report due under this Act will be an  
18 initial report or a final report, if applicable.

19 SECTION 3. This Act takes effect September 1, 2005.