

BILL ANALYSIS

Senate Research Center
80R20045 CBH/DAK-D

C.S.H.B. 3928
By: Keffer, Jim et al. (Ogden)
Finance
5/15/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the 79th Legislature, 3rd Called Session, 2006, the legislature enacted H.B. 3 to restructure the state's franchise tax. The restructuring includes expanding the tax to include newly taxed entities and changing how the tax is calculated. Under the revised franchise tax--effective January 1, 2008, and applying to all tax returns filed on or after that date--most partnerships, except general partnerships of natural persons, associations, business trusts, limited liability companies, and corporations must pay a tax based on total revenue, less the taxpayer's choice of either cost of goods sold or compensation.

The resulting "taxable margin," that may not exceed 70 percent of total revenue, is apportioned using gross receipts, and is taxed at a one percent tax rate or at 0.5 percent for wholesalers and retailers. While the first annual payment of the revised franchise tax is not due until May of 2008, a number of issues have been identified that require correction, clarification, or revision.

C.S.H.B. 3928 makes changes to the revised franchise tax.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 13 (Section 171.1011, Tax Code) and SECTION 30 (Section 171.214, Tax Code).

Rulemaking authority is expressly granted to the secretary of state in SECTION 31 (Section 171.3125, Tax Code) of this bill.

Rulemaking authority previously granted to the comptroller of public accounts is modified in SECTION 19 (Section 171.1015, Tax Code) of this bill.

Rulemaking authority previously granted to the comptroller of public accounts is rescinded in SECTION 13 (Section 171.1011, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the title of Chapter 171, Tax Code, to read as follows:

CHAPTER 171. ELECTIVE FRANCHISE TAX

SECTION 2. Amends Section 171.0001, Tax Code, as effective January 1, 2008, by amending Subdivisions (6), (8), (9), (10), (15), and (17), and adding Subdivisions (11-a) and (13-a), to redefine "client company," "controlling interest," "Internal Revenue Code," "lending institution," "staff leasing services company," and "unitary business" and to define "natural person" and "security."

SECTION 3. Amends Section 171.0002, Tax Code, as effective January 1, 2008, to redefine "taxable entity." Sets forth entities that are not included under the definition of a taxable entity. Provides that certain sole proprietorships are not exempt under Subsection (b)(1) under certain conditions.

SECTION 4. Amends Section 171.0003(a), Tax Code, as effective January 1, 2008, to provide that an entity is a passive entity only if during the period on which margin is based, the entity's federal gross income consists of at least 90 percent of capital gains from the sale of real property,

gains from the sale of commodities traded on a commodities exchange, and gains from the sale of securities, among other income.

SECTION 5. Amends Section 171.0004(e), Tax Code, as effective January 1, 2008, to provide that holding a seat on the board of directors of an entity does not by itself constitute conduct of an active trade or business for purposes of this section (Definition of Conducting Active Trade or Business).

SECTION 6. Amends Section 171.001, Tax Code, as effective January 1, 2008, as follows:

Sec. 171.001. New heading: IMPOSITION OF TAX AT ELECTION OF TAXABLE ENTITY; NO LIABILITY FOR CHAPTER 172 FRANCHISE TAX. (a) Authorizes each taxable entity that does business in this state or that is chartered or organized in this state to elect to pay the tax imposed under this chapter instead of the tax imposed under Chapter 172.

(b) Provides that a taxable entity that elects to pay the tax imposed under this chapter is not liable for the tax imposed under Chapter 172.

(c) Creates this subsection from existing text.

(d) Provides that the tax imposed under this section (Tax Imposed) or Section 171.0011 (Additional Tax), Tax Code, is not imposed on an entity if the entity qualifies as a passive entity as defined by Section 171.0003 (Definition of Passive Entity), Tax Code, during the period on which the entity's report is based.

SECTION 7. Amends Sections 171.0011(a) and (b), Tax Code, as effective January 1, 2008, as follows:

(a) Creates an exception provided by Section 171.001(c), rather than Subsection (e) (providing that an additional tax is not imposed on a taxable entity that becomes no longer subject to the tax imposed under this chapter because the entity qualifies as a passive entity), to the provision that an additional tax is imposed on a taxable entity that for any reason becomes no longer subject to the tax imposed under this chapter (Franchise Tax).

(b) Provides that the additional tax provided under this section is equal to the appropriate rate under Section 171.002 (Rates; Computation of Tax), Tax Code, of the taxable entity's taxable margin computed beginning on the day after the last day for which the tax imposed on taxable margin or net taxable earned surplus was computed.

SECTION 8. Amends Section 171.002, Tax Code, as effective January 1, 2008, by amending Subsections (a), (b), (c), and (d), as follows:

(a) Provides that, subject to Section 171.003 (Increase in Rate Requires Voter Approval) and except as provided by Subsection (b), the rate of the franchise tax is one percent of taxable margin, rather than one percent per year of privilege period of taxable margin.

(b) Provides that the rate of the franchise tax is 0.5 percent of taxable margin, rather than 0.5 percent per year of privilege period of taxable margin, for those taxable entities primarily engaged in retail or wholesale trade.

(c) Makes conforming changes.

(d) Provides that a taxable entity is not required to pay any tax and is not considered to owe any tax for a period if the amount of the taxable entity's total revenue from its entire business is less than or equal to \$300,000 or the amount determined under Section 171.006 per 12-month period on which margin is based.

SECTION 9. Amends Subchapter A, Chapter 171, Tax Code, by adding Section 171.0021, as follows:

Sec. 171.0021. DISCOUNTS FROM TAX LIABILITY FOR SMALL BUSINESSES.

(a) Entitles a taxable entity to a discount of the tax imposed under this chapter that the taxable entity is required to pay after determining its taxable margin under Section 171.101, applying the appropriate rate of the tax under Section 171.002(a) or (b), and subtracting any other allowable credits in a certain manner.

(b) Provides that the amounts under Subsection (a) are subject to adjustment as provided by Section 171.006.

SECTION 10. Amends the heading to Section 171.006, Tax Code, as effective January 1, 2008, to read as follows:

Sec. 171.006. ADJUSTMENT OF ELIGIBILITY FOR NO TAX DUE, DISCOUNTS, AND COMPENSATION DEDUCTION.

SECTION 11. Amends Section 171.006(b), Tax Code, as effective January 1, 2008, to provide that certain amounts prescribed by Sections 171.002(d)(2), 171.0021, and 171.1013(c) are adjusted beginning in 2010, rather than 2009, on January 1 of each even-numbered year, rather than odd-numbered year.

SECTION 12. Amends Section 171.101(d), Tax Code, as effective January 1, 2008, to require a taxable entity to notify the comptroller of public accounts (comptroller) of its election, as provided by Subsection (a)(1)(B)(ii) (regarding a taxable entity electing to subtract certain items from its taxable margin) not later than the due date of the annual report. Deletes existing text authorizing the election to be changed by filing an amended report.

SECTION 13. Amends Section 171.1011, Tax Code, as effective January 1, 2008, by amending Subsections (b), (c), (d), (e), (g-3), (h), (n), and (o), and adding Subsections (g-4) and (t), as follows:

(b) Provides that a reference to an amount reportable as income, rather than entered, on a line number on an Internal Revenue Service (IRS) form is the amount entered to the extent the amount entered complies with federal income tax law and includes the corresponding amount entered on a variant of the form, or a subsequent form, with a different line number to the extent the amount entered complies with federal income tax law. Deletes existing text requiring the comptroller to adopt rules as necessary to accomplish the legislative intent prescribed by this subsection and Subsection (a) (regarding references to certain IRS forms).

(c) Provides that the total revenue of a taxable entity treated for federal income tax purposes as a corporation is an amount computed in a certain manner, including by subtracting the net distributive income from a taxable entity and a passive entity, as described by Section 171.0003, treated as partnerships or as S corporations for tax purposes, rather than from partnerships and trusts and limited liability companies (LLC). Provides that the total revenue of a taxable entity treated for federal income tax purposes as a partnership is an amount computed in a certain manner, including by adding the amounts reportable as income on lines 4, 6, and 7, rather than lines 4 through 7, Internal Revenue Service Form (form) 1065, the amounts reportable as income on line 17 on form 8825, and the amounts reportable as income on line 11, plus line 2 or line 45 on form 1040, schedule F and by subtracting net distributive income from a taxable entity and a passive entity, as described by Section 171.0003, treated as partnerships or as S corporations for tax purposes, rather than from partnerships and trusts and LLCs. Makes conforming changes.

(d) Requires a taxable entity, rather than a corporation, that is a part of a federal consolidated group to compute its total revenue under Subsection (c) as if it had filed a separate return for federal income tax purposes, subject to Section 171.1014 (Combined Reporting; Affiliated Group Engaged in Unitary Business), Tax Code.

(e) Requires a taxable entity that owns an interest in a passive entity, rather than a passive entity that is not included in a group report under Section 171.1014, to exclude from said entity's total revenue the share of the net income of the passive entity, but only to the extent the net income of the passive entity was generated by the margin of any other taxable entity.

(g-3) Requires a taxable entity that provides legal services to exclude from its total revenue certain flow-through funds mandated by law, contract, or fiduciary duty, or reimbursement of the taxable entity's certain expenses incurred in prosecuting a claimant's matter to the extent included under Subsection (c)(1)(A) (regarding the addition of certain amounts to compute taxable margin for a taxable entity treated as a corporation), (c)(2)(A) (regarding the addition of certain amounts to compute taxable margin for a taxable entity treated as a partnership), or (c)(3) (regarding the computation of taxable margin for a taxable entity other than a corporation or a partnership). Makes nonsubstantive changes.

(g-4) Requires a taxable entity that is a pharmacy cooperative to exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), flow-through funds from rebates from pharmacy wholesalers that are distributed to the pharmacy cooperative's shareholders.

(h) Prohibits the taxable entity from excluding payments described by Subsection (f), (g), (g-1), (g-2), (g-3), or (g-4) that are made to entities that are members of the affiliated group if the taxable entity belongs to an affiliated group.

(n) Requires a taxable entity that is a health care provider to exclude the total amount of certain payments received by the health care provider from its total revenue to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), Tax Code.

(o) Deletes existing text providing that a deduction of 50 percent of the amounts described by Subsection (n) for a health care provider that is a health care institution is made to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), Tax Code.

(t) Requires the comptroller to adopt rules as necessary to accomplish the legislative intent prescribed by this section.

SECTION 14. Amends Section 171.1011(1)(1), Tax Code, as effective January 1, 2008, to redefine "sales commission."

SECTION 15. Amends Section 171.1012(a)(3)(A), Tax Code, as effective January 1, 2008, to redefine "tangible personal property."

SECTION 16. Amend Sections 171.1012, Tax Code, as effective January 1, 2008, by amending Subsections (c), (g), (h), and (k) and adding Subsection (o), as follows:

(c) Includes depreciation, depletion, and amortization, reported on the federal income tax return on which the report under this chapter is based as a direct cost of acquiring or producing a good to be included in the cost of goods.

(g) Authorizes, rather than requires, a taxable entity that is allowed a subtraction by this section (Determination of Cost of Goods Sold) and that is subject to Section 263A (Capitalization and Inclusion in Inventory Costs of Certain Expenses), 460 (Special Rules for Long Term Contracts), or 471 (General Rule for Inventories), Internal Revenue Code, to capitalize that cost in the same manner and to the same extent that the taxable entity capitalized that cost on its federal income tax return or to expense those costs, rather than capitalizing that cost under federal law and regulations, with certain exceptions. Requires a taxable entity that elects to capitalize costs to capitalize each cost allowed under this section that it capitalized on its federal income tax return. Prohibits the entity from deducting any cost in ending inventory from a previous report if the entity chooses to expense costs allowed under this section as a cost of goods sold. Prohibits the entity that elects to expense a cost of goods sold from subtracting of a cost that incurred before the

first day of the period on which the report is based. Prohibits the capitalization of a cost expensed on a previous report if the taxable entity elects to expense a cost of goods sold and later elects to capitalize that cost.

(h) Requires a taxable entity to determine its cost of goods sold in accordance with the methods used on the federal income tax return on which the report under this chapter is based, rather than the methods permitted by federal statutes and regulations, except as otherwise provided by this section.

(k) Authorizes a taxing entity that is a lending institution that offers loans to the public and elects to subtract cost of goods sold to subtract an amount equal to interest expense as a cost of goods sold, unless the entity is primarily engaged in an activity described by category 5932 (Used Merchandise Stores) of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget. Provides that, for purposes of this subsection, an entity engaged in lending to unrelated parties solely for agriculture production offers loans to the public.

(o) Requires, if a taxable entity, including a taxable entity with respect to which cost of goods sold is determined pursuant to Section 171.1014(e)(1), whose principal business activity is film or television production or broadcasting or the distribution of tangible personal property described by Subsection (a)(3)(A)(ii), or any combination of these activities, elects to subtract cost of goods sold, the cost of goods sold for the taxable entity to be the costs described in this section in relation to the property and include depreciation, amortization, and other expenses directly related to the acquisition, production, or use of the property, including expenses for the right to broadcast or use the property.

SECTION 16. Amends Section 171.1013, Tax Code, as effective January 1, 2008, by amending Subsections (a), (b), and (c) and adding Subsection (b-1), as follows:

(a) Redefines "wages and cash compensation."

(b) Authorizes a taxable entity, subject to Section 171.1014, Tax Code, that elects to subtract compensation for the purpose of computing its taxable margin under Section 171.101 to subtract an amount equal to the cost of all benefits, to the extent deductible for federal income tax purposes, that the entity provides to certain persons. Deletes existing text authorizing the deduction of retirement costs to the extent deductible for federal income tax purposes.

(b-1) Provides that this subsection applies to a taxable entity that is a small employer, as that term is defined by Section 1501.002 (Definitions), Insurance Code, and that has not provided health care benefits to any of its employees in the calendar year preceding the beginning date of its reporting period. Authorizes a taxable entity to which this subsection applies that elects to subtract compensation for the purpose of computing its taxable margin under Section 171.101, subject to Section 171.1014, to subtract health care benefits as provided under Subsection (b) and to also subtract certain amounts relating to the cost of health care benefits.

(c) Prohibits a taxable entity from including more than \$300,000, or the amount determined under Section 171.006 (Adjustment of Eligibility for Exemption and Compensation Deduction), Tax Code, per 12-month period on which margin is based for any person in the amount of wages and cash compensation it determines under this section, rather than Section 171.101, Tax Code, notwithstanding the actual amount of wages and cash compensation paid by a taxable entity to certain persons. Prohibits a combined group of multiple entities paying one person from subtracting in relation to that person a total of more than \$300,000, or the amount determined under Section 171.006, Tax Code.

SECTION 18. Amends Section 171.014, Tax Code, as effective January 1, 2008, by amending Subsections (b), (d), and (f) and adding Subsections (d-1), (h), and (i), as follows:

(b) Provides that a combined group is a single taxable entity for purposes of the application of the tax imposed under this chapter, including Section 171.002(d) (regarding certain circumstances under which a taxable entity is not required to pay tax), Tax Code.

(d) Prohibits the taxable margin of the combined group from exceeding 70 percent of the combined group's total revenue from its entire business, as provided by Section 171.101(a)(1)(A), regardless of the combined group's election to subtract either cost of goods sold or compensation that applies to all of its members.

(d-1) Authorizes a member of a combined group to claim costs that qualify under Section 171.1012, Tax Code, as a costs of goods sold if the goods for which the costs are incurred are owned by another member of the combined group.

(f) Provides that the determination of compensation for each of a combined group's members as provided by Section 171.1013 (Determination of Compensation), Tax Code, as if each member were an individual taxable entity, is subject to the limitation provided by Section 171.1013(c) (regarding a limitation of compensation to \$300,000, or the amount determined under Section 171.006, Tax Code), Tax Code.

(h) Requires each taxable entity that is part of a combined group to include its activities for the same period used by the combined group for purposes of determining margin and apportionment.

(i) Requires each member of the combined group to be jointly and severally liable for the tax of the combined group.

SECTION 19. Amends Section 171.1015, Tax Code, as effective January 1, 2008, as follows:

Sec. 171.1015. REPORTING FOR CERTAIN PARTNERSHIPS IN TIERED PARTNERSHIP ARRANGEMENT. (a) Redefines "tiered partnership arrangement."

(b) Authorizes a taxable entity that is an upper tier entity, in addition to the tax it is required to pay under this chapter on its own taxable margin, to include, for purposes of calculating its own taxable margin, the total revenue of a lower tier entity if the lower tier entity submits a report to the comptroller showing the amount of total revenue that each upper tier entity that owns it should include within the upper tier entity's own taxable margin calculation, according to the ownership interest of the upper tier entity. Deletes existing text providing that an upper tier partnership is not required to pay under this chapter on any taxable margin reported under this section.

(c) Provides that this section does not apply to that percentage of the total revenue attributable to an upper tier entity by a lower tier entity if the upper tier entity is not subject to the tax under this chapter and provides that, in this case, the lower tier entity is liable for the tax on its taxable margin. Deletes existing text providing that this section does not apply to that percentage of the taxable margin attributable to a lower tier entity by an upper tier partnership if the lower tier entity is not subject to the tax under this chapter and deletes existing text providing that, in this case, the higher tier partnership is liable for the tax on its taxable margin.

(d) Provides that Section 171.002(d) does not apply to an upper tier entity if, before the attribution of any total revenue by a lower tier entity to an upper tier entity under this section, the lower tier entity does not meet the criteria of Section 171.002(d)(1) or (d)(2).

(e) Redesignated from existing Subsection (d).

SECTION 20. Amends Section 171.103, Tax Code, as effective January 1, 2008, by adding Subsection (c), as follows:

(c) Requires a combined group, for informational purposes only, to include in a report filed under Section 171.201 or 171.202 financial information relating to the gross receipts computed under Subsection (a) of each taxable entity that is a member of the combined group and that does not have a nexus with this state for the purpose of taxation. Provides that a combined group is subject to a penalty in the amount of \$10,000 for each member of the combined group for which the combined group fails to report the financial information required by this subsection or underreports the financial information by 25 percent or more.

SECTION 21. Amends Section 171.1055(b), Tax Code, as effective January 1, 2008, as follows:

(b) Prohibits receipts derived from transactions between individual members of a combined group that are excluded under Section 171.1014(c)(3) from being included in the receipts of the taxable entity from its business done in this state as determined under Section 171.103, except that receipts ultimately derived from the sale of tangible personal property between individual members of a combined group where one member party to the transaction does not have nexus in this state is required to be included in the receipts of the taxable entity from its business done in this state as determined under Section 171.103 to the extent that the member of the combined group that does not have nexus in this state resells the tangible personal property without substantial modification to a purchaser in this state. Defines "receipts ultimately derived from the sale."

SECTION 22. Amends Section 171.106, Tax Code, as effective January 1, 2008, by adding Subsection (f), to provide that, notwithstanding Section 171.1055, if a loan or security is treated as inventory of the seller for federal income tax purposes, the gross proceeds of the sale of that loan or security are considered gross receipts.

SECTION 23. Amends Section 171.111, Tax Code, as effective January 1, 2008, as follows:

Sec. 171.111. TEMPORARY CREDIT ON TAXABLE MARGIN. (a) Requires, rather than authorizes, a taxable entity to notify the comptroller in writing of its intent to take a credit, rather than to preserve its right to take a credit, in an amount allowed by this section on the tax due on taxable margin on the first report originally due under this chapter on or after January 1, 2008, rather than before March 1, 2007. Authorizes the entity to claim the credit for not more than 20 consecutive privilege periods beginning with the first report originally due under this chapter on or after January 1, 2008, rather than January 1, 2007. Makes a conforming change.

(b) Provides that the credit allowed under this section for any privilege period is computed by determining the amount of the business loss carryforwards of the taxable entity under Section 171.110(e) (regarding provisions for business losses), Tax Code, as that section applied to annual reports originally due before January 1, 2008, that were not exhausted on a report originally due under this chapter before January 1, 2008, multiplying the amount determined under Subdivision (1) by 2.25 percent for reports originally due on or after January 1, 2008, and before January 1, 2018, and by 7.75 percent for reports originally due on or after January 1, 2018, and before September 1, 2027, and multiplying the amount determined under Subdivision (2) by 4.5 percent. Deletes existing text providing previous credit computation formula.

(c) Authorizes the comptroller to request that the taxable entity submit with each annual report, rather than in said report for each succeeding privilege period, in which the taxable entity is eligible to take a credit, information relating to the amount determined under Subsection (b)(1). Requires the taxable entity to submit in the form and content the comptroller requires any information relating to the amount determined under Subsection (b)(1) or any other matter relevant to the computation of the credit for which the taxable entity is eligible, rather than relating to the assets and liabilities that determine the amount of the credit. Deletes existing text requiring a taxable entity to submit a statement of the amount determined under Subsection (b)(1) (regarding determined amount of

business loss carryforwards) with a notice of intent to preserve its right to take a credit.

(d) Prohibits a credit that a taxable entity is entitled to under this section from being conveyed, assigned, or transferred. Provides that a taxable entity loses the right to claim the credit if the entity changes combined groups after June 30, 2007. Deletes existing text providing that a credit that a taxable entity is entitled to under this section does not convey, and prohibits the credit from being assigned or transferred, in relation to a transaction in which the taxable entity is purchased by another entity.

(d-1) Prohibits a taxable entity, other than a combined group, from claiming the credit under this section unless the taxable entity was, on May 1, 2006, subject to the tax imposed by this chapter as this chapter existed on that date. Authorizes a taxable entity that is a combined group to claim the credit for each member entity that was, on May 1, 2006, subject to the tax imposed by this chapter as this chapter existed on that date and requires the taxable entity that is a combined group to compute the amount of the credit for that member as provided by this section.

(d-2) Prohibits the amount of the credit claimed, including any unused credit carried forward, from exceeding the amount of franchise tax due for the report. Prohibits unused credits from being carried forward to reports originally due on or after September 1, 2027.

(e) Expiration date, this section: September 1, 2027, rather than September 1, 2026.

SECTION 24. Amends Section 171.1121(b), Tax Code, as effective January 1, 2008, to require a taxable entity to use the same accounting methods to apportion margin as used in computing margin, rather than reportable federal taxable income.

SECTION 25. Amends Section 171.1532(b), Tax Code, as effective January 1, 2008, to include net taxable earned surplus on a previous report in determining the tax covering the regular annual period for a taxable entity.

SECTION 26. Amends Section 171.201(a), Tax Code, as effective January 1, 2008, to require a taxable entity on which the franchised tax is imposed to file an initial report with the comptroller containing, among other information, financial information of the taxable entity necessary to compute the tax under this chapter, rather than information showing the financial condition of the taxable entity for a certain time period.

SECTION 27. Amends Sections 171.203(a), (b), (d), and (e), Tax Code, as effective January 1, 2008, as follows:

(a) Requires an LLC on which the franchise tax is imposed, regardless of whether the LLC is required to pay the tax, to submit a report to the comptroller with certain information. Makes conforming changes.

(b), (d), and (e) Makes conforming changes.

SECTION 28. Amends Section 171.204, Tax Code, by adding Subsection (c) to authorize the comptroller to require any entity to file information as necessary to verify that the entity is not subject to a franchise tax.

SECTION 29. Amends Subchapter E, Chapter 171, Tax Code, by adding Section 171.2125, as follows:

Sec. 171.2125. CALCULATING COST OF GOODS OR COMPENSATION IN STAFF LEASING ARRANGEMENTS. Requires a taxable entity that is a client company of a staff leasing services company to rely on information provided by the staff leasing

services company on a form promulgated by the comptroller or an invoice in calculating cost of goods sold or compensation.

SECTION 30. Amends Subchapter E, Chapter 171, Tax Code, by adding Section 171.214, as follows:

Sec. 171.214. **SMALL BUSINESS TAX ADVISORY COMMITTEE.** (a) Provides that the Small Business Tax Advisory Committee (advisory committee) will conduct an annual study of the effects of the tax levied under this chapter on small businesses in the state. Requires the study to take certain factors into consideration related to the impact of the franchise tax.

(b) Requires the comptroller to chair the advisory committee and requires the comptroller to appoint one member from each chamber of the legislature, at least one certified public accountant, and at least three small business owners.

(c) Requires the comptroller, by rule, to establish procedures for the functions of the advisory committee, including a report to be issued to the speaker of the house of representatives, the lieutenant governor, and the governor not later than January 1, 2009.

SECTION 31. Amends Subchapter G, Chapter 171, Tax Code, by adding Sections 171.3015 and 171.3125, as follows:

Sec. 171.3015. **FORFEITURE OF CERTIFICATE OR REGISTRATION OF TAXABLE ENTITY.** Authorizes the comptroller to forfeit the certificate or registration of a taxable entity using the same reasons and the same procedures in relation to the forfeiture of a corporation's charter or certificates of authority.

Sec. 171.3125. **REVIVAL OF CERTIFICATE OR REGISTRATION OF TAXABLE ENTITY AFTER FORFEITURE BY SECRETARY OF STATE.** (a) Authorizes the secretary of state, using the same procedures the secretary uses in relation to the revival of a corporation's charter or certificate, to revive the certificate or registration of a taxable entity.

(b) Authorizes the secretary of state to adopt rules to implement this section.

SECTION 32. Amends Section 171.309, Tax Code, as follows:

Sec. 171.309. **FORFEITURE BY SECRETARY OF STATE.** Authorizes the secretary of state to forfeit the charter, certificate, or registration of a taxable entity, rather than the charter or certificate of authority of a corporation, if the secretary receives the comptroller's certification under Section 171.302 (Certification by Comptroller), Tax Code, and the taxable entity, rather than the corporation, does not revive its forfeited privileges within a certain time period. Deletes existing text including a corporation's lack of assets from which certain judgments imposed by this chapter may be satisfied as a prerequisite to the secretary of state forfeiting a charter or certificate of authority.

SECTION 33. Amends Subchapter H, Chapter 171, Tax Code, by adding Section 171.356, as follows:

Sec. 171.356. **BILLING OR INVOICING THE TAX AS A FEE, CHARGE, REIMBURSEMENT, OR OTHER ITEM.** (a) Prohibits a taxable entity from including in a bill or invoice a fee, charge, reimbursement, or other item that the taxable entity represents is for the purpose of full or partial payment or reimbursement of the tax under this chapter unless certain conditions are satisfied.

(b) Sets forth certain conditions relative to a taxable entity that collects a fee, charge, reimbursement, or other item in a manner that violates Subsection (a).

(c) Provides that the payment by a third party of a fee, charge, reimbursement, or other item collected in a manner that violates Subsection (a) is considered to be a voluntary payment of tax by that person and the amount remitted by the taxable entity under Subsection (b) is in addition to the amount otherwise owed and payable by the taxable entity under this chapter.

(d) Provides that this section does not apply to a bill or invoice under a contract for the lease of real property.

SECTION 34. Amends Section 17, Chapter 1, Acts of the 79th Legislature, 3rd Called Session, 2006, as follows:

Sec. 17. Deletes existing Subsection (a) (regarding the lack of effect of the repeal of Section 171.111, Tax Code, on a credit accrued under that section). Authorizes a corporation that has any unused credits established, rather than accrued, before the effective date of this Act under Section 171.111, Tax Code, to claim those unused credits on or with the tax report for the period in which the credits were established. Makes a conforming change.

SECTION 35. Amends Sections 18(b) through (f), Chapter 1, Acts of the 79th Legislature, 3rd Called Session, 2006, to make conforming changes.

SECTION 36. (a) Amends Section 22, Chapter 1, Acts of the 79th Legislature, 3rd Called Session, 2006, by amending Subsection (b) and adding Subsections (b-1), (b-2), and (g), as follows:

(b) Deletes existing text requiring an entity subject to the franchise tax as it existed before the effective date of this Act at any time between December 31, 2006, and January 1, 2008, to file a final report for the privilege of doing business at any time between June 30, 2007, and January 1, 2008, based on a certain time period.

(b-1) Provides that this subsection applies to an entity that is not doing business in this state on January 1, 2008, that would be subject to the franchise tax as amended by this Act if it were doing business in this state on or after January 1, 2008, but would not be subject to the franchise tax as it existed before being amended by this Act, and was doing business in this state between June 30, 2007, and January 1, 2008.

(b-2) Requires an entity to which Subsection (b-1) applies to file a final report and pay an additional tax equal to the appropriate rate under Section 171.002, Tax Code, as amended by this Act, of the entity's taxable margin for a certain time period, for the privilege of doing business in this state at any time between June 30, 2007, and January 1, 2008.

(g) Requires an entity becoming subject to the franchise tax that is part of a combined group to include its activity for the same period used by the combined group for purposes of determining margin and apportionment, except as provided by Subsections (b)(1) and (b)(2).

(b) Effective date, this section: upon passage or September 1, 2007.

SECTION 37. Amends Sections 23(b) and (f), Chapter 1, Acts of the 79th Legislature, 3rd Called Session, 2006, as follows:

(b) Requires an information report required under this section to include the total of maintenance and operations school property taxes paid by the entity to school districts in Texas in tax year 2005, rather than tax years 2005, 2006, and 2007.

(f) Requires the comptroller to require the entities to submit their information reports on or before February 15, 2007, rather than that date and February 15, 2008. Requires the

comptroller to report the results of the information reports to certain elected officials on or before April 1, 2007, rather than that date and April 1, 2008. Makes conforming changes.

SECTION 38. Amends Subtitle F, Title 2, Tax Code, by adding Chapter 172, as follows:

CHAPTER 172. FRANCHISE TAX

Sec. 172.001. DEFINITIONS; REFERENCES IN OTHER LAW. (a) Provides that, unless otherwise provided by this chapter, the terms used in this chapter have the same meaning as the terms used in Chapter 171.

(b) Provides that a reference in other law to the franchise tax means, as appropriate, the tax imposed under this chapter or the tax imposed under Chapter 171 by an entity that elects to pay that tax.

Sec. 172.002. TAX IMPOSED. (a) Provides that a franchise tax is imposed on each taxable entity that does business in this state or that is chartered or organized in this state.

(b) Provides that the tax imposed under this chapter extends to the limits of the United States Constitution and the federal law adopted under the United States Constitution.

(c) Provides that a taxable entity that elects to pay the elective franchise tax under Chapter 171 is not liable for the tax imposed under this chapter.

Sec. 172.003. AMOUNT OF TAX. Provides that the amount of tax imposed by this chapter on a taxable entity is computed by certain methods.

Sec. 172.004. PAYMENT. Requires a taxable entity that pays the tax imposed by this chapter to pay the tax to the comptroller in the same manner provided for the elective franchise tax under Chapter 171.

Sec. 172.005. COLLECTION, ADMINISTRATION, AND ENFORCEMENT. Requires the comptroller to collect, administer, and enforce the tax under this chapter in the same manner as the comptroller collects, administers, and enforces the elective franchise tax under Chapter 171.

SECTION 39. Repealer: Section 171.0003(a-1) (regarding the prohibition of certain income being considered as income from conducting an active trade or business in making a computation to determine whether an entity is a passive entity) and Section 171.0011(e) (regarding an additional tax that is not imposed on a taxable entity that becomes a passive entity and is no longer subject to the franchise tax), Tax Code.

SECTION 40. Makes application of this Act prospective.

SECTION 41. Effective date, except as otherwise provided by this Act: January 1, 2008.