

By: Paxton

H.B. No. 3463

A BILL TO BE ENTITLED

AN ACT

relating to the application of the franchise tax to a combined group.

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

SECTION 1. Section 171.101(a), Tax Code, as effective January 1, 2008, is amended to read as follows:

(a) The taxable margin of a taxable entity is computed by:

(1) determining the taxable entity's margin, which is the lesser of:

(A) 70 percent of the taxable entity's total revenue from its entire business, as determined under Section 171.1011; or

(B) an amount computed by:

(i) determining the taxable entity's total revenue from its entire business, under Section 171.1011 and subject to Section 171.1014;

(ii) subtracting, at the election of the taxable entity and subject to Section 171.1014, either:

(a) cost of goods sold, as determined under Section 171.1012; or

(b) compensation, as determined under Section 171.1013; and

(iii) subtracting, in addition to any subtractions made under Subparagraph (ii)(a) or (b), compensation,

1 as determined under Section 171.1013, paid to an individual during
2 the period the individual is serving on active duty as a member of
3 the armed forces of the United States if the individual is a
4 resident of this state at the time the individual is ordered to
5 active duty and the cost of training a replacement for the
6 individual;

7 (2) apportioning the taxable entity's margin to this
8 state as provided by Section 171.106 to determine the taxable
9 entity's apportioned margin; and

10 (3) subtracting from the amount computed under
11 Subdivision (2) any other allowable deductions to determine the
12 taxable entity's taxable margin.

13 SECTION 2. Section 171.1014, Tax Code, as effective January
14 1, 2008, is amended by amending Subsections (c), (d), (e), and (f)
15 and adding Subsections (d-1) and (d-2) to read as follows:

16 (c) For purposes of Section 171.101, a combined group shall
17 determine its total revenue by:

18 (1) determining:

19 (A) for each member of the combined group who
20 elects under Subsection (d-1) not to subtract either cost of goods
21 sold or compensation, an amount equal to 70 percent of the member's
22 total revenue from its entire business, as determined under Section
23 171.1011 as if the member were an individual taxable entity; and

24 (B) for the other members of the combined group,
25 the total revenue of each of those [~~its~~] members as provided by
26 Section 171.1011 as if the member were an individual taxable
27 entity;

1 (2) adding the total revenues of the members
2 determined under Subdivision (1) together; and

3 (3) subtracting, to the extent included under Section
4 171.1011(c)(1)(A), (c)(2)(A), or (c)(3), items of total revenue
5 received from a member of the combined group.

6 (d) Except as provided by Subsection (d-1), for [~~For~~]
7 purposes of Section 171.101, a combined group shall make an
8 election to subtract either cost of goods sold or compensation that
9 applies to all of its members.

10 (d-1) A combined group may allow a member of the combined
11 group to elect not to subtract either cost of goods sold or
12 compensation for purposes of Section 171.101, but instead to have
13 the member's total revenue determined under Subsection (c)(1)(A).

14 (d-2) Regardless of the election under Subsection (d) or
15 (d-1), the taxable margin of the combined group may not exceed 70
16 percent of the combined group's total revenue from its entire
17 business, as provided by Section 171.101(a)(1)(A).

18 (e) Subject to Subsection (d-1), for [~~For~~] purposes of
19 Section 171.101, a combined group that elects to subtract costs of
20 goods sold shall determine that amount by:

21 (1) determining, as provided by Section 171.1012, the
22 cost of goods sold for each of its members that does not make the
23 election under Subsection (d-1) [as provided by Section 171.1012]
24 as if the member were an individual taxable entity;

25 (2) adding the amounts of cost of goods sold
26 determined under Subdivision (1) together; and

27 (3) subtracting from the amount determined under

1 Subdivision (2) any cost of goods sold amounts paid from one member
2 of the combined group to another member of the combined group, but
3 only to the extent the corresponding item of total revenue was
4 subtracted under Subsection (c)(3).

5 (f) For purposes of Section 171.101, a combined group that
6 elects to subtract compensation shall determine that amount by:

7 (1) determining, as provided by Section 171.1013, the
8 compensation for each of its members that does not make the election
9 under Subsection (d-1) [as provided by Section 171.1013] as if each
10 member were an individual taxable entity;

11 (2) adding the amounts of compensation determined
12 under Subdivision (1) together; and

13 (3) subtracting from the amount determined under
14 Subdivision (2) any compensation amounts paid from one member of
15 the combined group to another member of the combined group, but only
16 to the extent the corresponding item of total revenue was
17 subtracted under Subsection (c)(3).

18 SECTION 3. This Act applies only to a report originally due
19 on or after the effective date of this Act.

20 SECTION 4. This Act takes effect September 1, 2008.