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H.B. No. 3928

A BILL TO BE ENTITLED

AN ACT

relating to technical changes to the revised franchise tax.

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

SECTION 1. Section 171.0001, Tax Code, as effective January 1, 2008, is amended by amending Subdivisions (6), (8), (9), (10), and (15) and adding Subdivision (11-a) to read as follows:

(6) "Client company" means:

(A) a person that contracts with a license holder under Chapter 91 [has the meaning assigned by Section 91.001], Labor Code, and is assigned employees by the license holder under that contract; or

(B) a client of a temporary employment service, as that term is defined by Section 93.001(2), Labor Code, to whom individuals are assigned for a purpose described by that subdivision.

(8) "Controlling interest" means:

(A) for a corporation, either more than 50 ~~[80]~~ percent ~~[or more]~~, owned directly or indirectly, of the total combined voting power of all classes of stock of the corporation, or more than 50 ~~[80]~~ percent ~~[or more]~~, owned directly or indirectly, of the beneficial ownership interest in the voting stock of the corporation; ~~[and]~~

(B) for a partnership, association, trust, or other entity other than a limited liability company, more than 50

1 [80] percent [~~or more~~], owned directly or indirectly, of the
2 capital, profits, or beneficial interest in the partnership,
3 association, trust, or other entity; and

4 (C) for a limited liability company, either more
5 than 50 percent, owned directly or indirectly, of the total
6 membership interest of the limited liability company or more than
7 50 percent, owned directly or indirectly, of the beneficial
8 ownership interest in the membership interest of the limited
9 liability company.

10 (9) "Internal Revenue Code" means the Internal Revenue
11 Code of 1986 in effect for the federal tax year beginning on January
12 1, 2007 [2006], not including any changes made by federal law after
13 that date, and any regulations adopted under that code applicable
14 to that period.

15 (10) "Lending institution" means an entity that makes
16 loans and:

17 (A) is regulated by the Federal Reserve Board,
18 the Office of the Comptroller of the Currency, the Federal Deposit
19 Insurance Corporation, the Commodity Futures Trading Commission,
20 the Office of Thrift Supervision, the Texas Department of Banking,
21 the Office of Consumer Credit Commissioner, [~~the Department of~~
22 ~~Savings and Mortgage Lending,~~] the Credit Union Department, or any
23 comparable regulatory body;

24 (B) is licensed by, registered with, or otherwise
25 regulated by the Department of Savings and Mortgage Lending;

26 (C) is a "broker" or "dealer" as defined by the
27 Securities Exchange Act of 1934 at 15 U.S.C. Section 78c; or

1 (D) provides financing to unrelated parties
2 solely for agricultural production.

3 (11-a) "Natural person" means a human being or the
4 estate of a human being. The term does not include a purely legal
5 entity given recognition as the possessor of rights, privileges, or
6 responsibilities, such as a corporation, limited liability
7 company, partnership, or trust.

8 (15) "Staff leasing services company" means:

9 (A) a business entity that offers staff leasing
10 services, as that term is defined [~~has the meaning assigned~~] by
11 Section 91.001, Labor Code; or

12 (B) a temporary employment service, as that term
13 is defined by Section 93.001, Labor Code.

14 SECTION 2. Section 171.0002, Tax Code, as effective January
15 1, 2008, is amended to read as follows:

16 Sec. 171.0002. DEFINITION OF TAXABLE ENTITY. (a) Except as
17 otherwise provided by this section, "taxable entity" means a
18 partnership, limited liability partnership, corporation, banking
19 corporation, savings and loan association, limited liability
20 company, business trust, professional association, business
21 association, joint venture, joint stock company, holding company,
22 or other legal entity. The term includes a combined group. A joint
23 venture does not include joint operating or co-ownership
24 arrangements meeting the requirements of Treasury Regulation
25 Section 1.761-2(a)(3) that elect out of federal partnership
26 treatment as provided by Section 761(a), Internal Revenue Code.

27 (b) "Taxable entity" does not include:

1 (1) a sole proprietorship;

2 (2) a general partnership;

3 (A) the direct ownership of which is entirely
4 composed of natural persons; and

5 (B) the liability of which is not limited under a
6 statute of this state or another state, including by registration
7 as a limited liability partnership;

8 (3) a passive entity as defined by Section 171.0003;

9 or

10 (4) an entity that is exempt from taxation under
11 Subchapter B.

12 (c) "Taxable entity" does not include an entity that is:

13 (1) a grantor trust as defined by Sections 671 and
14 7701(a)(30)(E), Internal Revenue Code, all of the grantors and
15 beneficiaries of which are natural persons or charitable entities
16 as described in Section 501(c)(3), Internal Revenue Code, excluding
17 a trust taxable as a business entity pursuant to Treasury
18 Regulation Section 301.7701-4(b);

19 (2) an estate of a natural person as defined by Section
20 7701(a)(30)(D), Internal Revenue Code, excluding an estate taxable
21 as a business entity pursuant to Treasury Regulation Section
22 301.7701-4(b);

23 (3) an escrow;

24 (4) ~~[a family limited partnership that is a passive~~
25 ~~entity in which at least 80 percent of the interests are held,~~
26 ~~directly or indirectly, by members of the same family, including an~~
27 ~~individual's ancestors, lineal descendants, spouse, and brothers~~

1 ~~and sisters by the whole or half blood, and the estate of any of~~
2 ~~these persons, and that is a limited partnership.~~

3 ~~[(A) formed pursuant to the Texas Revised Limited~~
4 ~~Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes),~~

5 ~~[(B) formed pursuant to the limited partnership~~
6 ~~law of any other state; or~~

7 ~~[(C) treated as a partnership for federal income~~
8 ~~tax purposes;~~

9 ~~[(5) a passive investment partnership that is a~~
10 ~~passive entity and that is:~~

11 ~~[(A) formed pursuant to the Texas Revised Limited~~
12 ~~Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes),~~

13 ~~[(B) formed pursuant to the limited partnership~~
14 ~~law of any other state; or~~

15 ~~[(C) formed pursuant to the limited partnership~~
16 ~~laws of any foreign country;~~

17 ~~[(6) a passive investment partnership that is a~~
18 ~~passive entity and is a general partnership;~~

19 ~~[(7) a trust that is a passive entity:~~

20 ~~[(A) that is taxable as a trust under Section~~
21 ~~641, Internal Revenue Code;~~

22 ~~[(B) all of the beneficiaries of which are~~
23 ~~natural persons or charitable entities as defined in Section~~
24 ~~501(c)(3), Internal Revenue Code;~~

25 ~~[(C) that is not a trust taxable as a business~~
26 ~~entity pursuant to Treasury Regulation Section 301.7701-4(b); and~~

27 ~~[(D) that is organized as a trust and is~~

1 ~~described in Section 7701(a)(30)(E), Internal Revenue Code,~~

2 [~~8~~] a real estate investment trust (REIT) as defined
3 by Section 856, Internal Revenue Code, and its "qualified REIT
4 subsidiary" entities as defined by Section 856(i)(2), Internal
5 Revenue Code, provided that:

6 (A) a REIT with any amount of its assets in direct
7 holdings of real estate, other than real estate it occupies for
8 business purposes, as opposed to holding interests in limited
9 partnerships or other entities that directly hold the real estate,
10 is a taxable entity; and

11 (B) a limited partnership or other entity that
12 directly holds the real estate as described in Paragraph (A) is not
13 exempt under this subdivision, without regard to whether a REIT
14 holds an interest in it; [~~or~~]

15 (5) [~~9~~] a real estate mortgage investment conduit
16 (REMIC), as defined by Section 860D, Internal Revenue Code;

17 (6) a nonprofit self-insurance trust created under
18 Chapter 2212, Insurance Code, or a predecessor statute;

19 (7) a trust qualified under Section 401(a), Internal
20 Revenue Code; or

21 (8) a trust or other entity that is exempt under
22 Section 501(c)(9), Internal Revenue Code.

23 (d) An entity that can file as a sole proprietorship for
24 federal tax purposes is not a sole proprietorship for purposes of
25 Subsection (b)(1) and is not exempt under that subsection if the
26 entity is formed in a manner under the statutes of this state, [~~or~~]
27 another state, or a foreign country that limit the liability of the

1 entity.

2 SECTION 3. Section 171.0004(e), Tax Code, as effective
3 January 1, 2008, is amended to read as follows:

4 (e) For purposes of this section:

5 (1) the ownership of a royalty interest or a
6 nonoperating working interest in mineral rights does not constitute
7 conduct of an active trade or business; ~~and~~

8 (2) payment of compensation to employees or
9 independent contractors for financial or legal services reasonably
10 necessary for the operation of the entity does not constitute
11 conduct of an active trade or business; and

12 (3) holding a seat on the board of directors of an
13 entity does not by itself constitute conduct of an active trade or
14 business.

15 SECTION 4. Section 171.001, Tax Code, as effective January
16 1, 2008, is amended by adding Subsection (c) to read as follows:

17 (c) The tax imposed under this section or Section 171.0011
18 is not imposed on an entity if, during the period on which the
19 report is based, the entity qualifies as a passive entity as defined
20 by Section 171.0003.

21 SECTION 5. Sections 171.0011(a) and (b), Tax Code, as
22 effective January 1, 2008, are amended to read as follows:

23 (a) Except as provided by Section 171.001(c) [~~Subsection~~
24 ~~(e)~~], an additional tax is imposed on a taxable entity that for any
25 reason becomes no longer subject to the tax imposed under this
26 chapter.

27 (b) The additional tax is equal to the appropriate rate

1 under Section 171.002 of the taxable entity's taxable margin
2 computed on the period beginning on the day after the last day for
3 which the tax imposed on taxable margin or net taxable earned
4 surplus was computed and ending on the date the taxable entity is no
5 longer subject to the tax imposed under this chapter.

6 SECTION 6. Section 171.002, Tax Code, as effective January
7 1, 2008, is amended by amending Subsections (a), (b), (c), and (d)
8 and adding Subsection (c-2) to read as follows:

9 (a) Subject to Section 171.003 and except as provided by
10 Subsection (b), the rate of the franchise tax is one percent [~~per~~
11 ~~year of privilege period~~] of taxable margin.

12 (b) The rate of the franchise tax is 0.5 percent [~~per year of~~
13 ~~privilege period~~] of taxable margin for those taxable entities
14 primarily engaged in retail or wholesale trade.

15 (c) A taxable entity is primarily engaged in retail or
16 wholesale trade only if:

17 (1) the total revenue from its activities in retail or
18 wholesale trade is greater than the total revenue from its
19 activities in trades other than the retail and wholesale trades;

20 (2) except as provided by Subsection (c-1), less than
21 50 percent of the total revenue from activities in retail or
22 wholesale trade comes from the sale of products it produces or
23 products produced by an entity that is part of an affiliated group
24 to which the taxable entity also belongs; and

25 (3) except as provided by Subsection (c-2), the
26 taxable entity does not provide retail or wholesale utilities,
27 including telecommunications services, ~~and~~ electricity, or gas.

1 (c-2) A taxable entity that is a retail electric provider
2 and that does not provide and is not affiliated with an entity that
3 provides transmission and distribution utility service is
4 primarily engaged in retail or wholesale trade.

5 (d) A taxable entity is not required to pay any tax and is
6 not considered to owe any tax for a period if:

7 (1) the amount of tax computed for the taxable entity
8 is less than \$1,000; or

9 (2) the amount of the taxable entity's total revenue
10 from its entire business is less than or equal to \$600,000
11 [~~\$300,000~~] or the amount determined under Section 171.006 per
12 12-month period on which margin is based.

13 SECTION 7. Subchapter A, Chapter 171, Tax Code, is amended by
14 adding Section 171.0025 to read as follows:

15 Sec. 171.0025. ANNUAL RATE ADJUSTMENTS TO MAINTAIN SCHOOL
16 DISTRICT MAINTENANCE AND OPERATIONS TAX RATES. (a) Beginning with
17 the calendar year following the first tax year in which the average
18 school district maintenance and operations tax rate is equal to or
19 less than 50 cents per \$100 of taxable value of property, the rates
20 of the franchise tax provided by Sections 171.002(a) and (b) are
21 adjusted in accordance with Subsection (c) by the percentage that
22 is necessary to provide for the deposit to the credit of the
23 property tax relief fund as required by Section 171.4011 of an
24 amount of revenue sufficient to maintain the average school
25 district maintenance and operations tax rate at the rate of 50 cents
26 per \$100 of taxable value of property, except that the rates of the
27 franchise tax may not be increased to rates that exceed the rates

1 provided by Sections 171.002(a) and (b).

2 (b) The rates provided by Sections 171.002(a) and (b) must
3 be adjusted under this section by equal percentages.

4 (c) Not later than November 1 of each year, the Legislative
5 Budget Board shall:

6 (1) determine using information provided by the Texas
7 Education Agency the average school district maintenance and
8 operations tax rate for that year; and

9 (2) beginning in the first year in which the
10 computation under Subdivision (1) indicates that the average school
11 district maintenance and operations tax rate is equal to or less
12 than 50 cents per \$100 of taxable value of property and in each
13 subsequent year:

14 (A) compute the new franchise tax rates as
15 provided by this section;

16 (B) submit the new franchise tax rates to the
17 secretary of state for publication in the Texas Register; and

18 (C) notify the comptroller of the applicable new
19 franchise tax rates.

20 (d) The new franchise tax rates computed under Subsection
21 (c) take effect on the January 1 following the date the computation
22 is made and apply to reports originally due on or after that date.

23 (e) Section 171.003 does not apply to an increase in a
24 franchise tax rate under this section.

25 SECTION 8. Section 171.003(a), Tax Code, is amended to read
26 as follows:

27 (a) Except as provided by Section 171.0025, an [~~An~~] increase

1 in a rate provided by Section 171.002(a) or (b) takes effect only if
2 approved by a majority of the registered voters voting in a
3 statewide referendum held on the question of increasing the rate.
4 The referendum must specify the increased rate or rates.

5 SECTION 9. The heading to Section 171.006, Tax Code, as
6 effective January 1, 2008, is amended to read as follows:

7 Sec. 171.006. ADJUSTMENT OF ELIGIBILITY FOR NO TAX DUE
8 [~~EXEMPTION~~] AND COMPENSATION DEDUCTION.

9 SECTION 10. Section 171.006(b), Tax Code, as effective
10 January 1, 2008, is amended to read as follows:

11 (b) Beginning in 2010 [~~2009~~], on January 1 of each
12 even-numbered [~~odd-numbered~~] year, the amounts prescribed by
13 Sections 171.002(d)(2) and 171.1013(c) are increased or decreased
14 by an amount equal to the amount prescribed by those sections on
15 December 31 of the preceding year multiplied by the percentage
16 increase or decrease during the preceding state fiscal biennium in
17 the consumer price index and rounded to the nearest \$10,000.

18 SECTION 11. Section 171.101(d), Tax Code, as effective
19 January 1, 2008, is amended to read as follows:

20 (d) An election under Subsection (a)(1)(B)(ii) shall be
21 made by the taxable entity on its annual report and is effective
22 only for that annual report. A taxable entity shall notify the
23 comptroller of its election not later than the due date of the
24 annual [~~The election may be changed by filing an amended~~] report.

25 SECTION 12. Section 171.1011, Tax Code, as effective
26 January 1, 2008, is amended by amending Subsections (b), (c), (d),
27 (e), (g), (g-3), (h), (n), and (o) and adding Subsections (g-4) and

1 (t) to read as follows:

2 (b) In this section, a reference to an amount reportable as
3 income [~~entered~~] on a line number on an Internal Revenue Service
4 form is the amount entered to the extent the amount entered complies
5 with federal income tax law and includes the corresponding amount
6 entered on a variant of the form, or a subsequent form, with a
7 different line number to the extent the amount entered complies
8 with federal income tax law. [~~The comptroller shall adopt rules as~~
9 ~~necessary to accomplish the legislative intent prescribed by this~~
10 ~~subsection and Subsection (a).~~]

11 (c) Except as provided by this section, and subject to
12 Section 171.1014, for the purpose of computing its taxable margin
13 under Section 171.101, the total revenue of a taxable entity is:

14 (1) for a taxable entity treated for federal income
15 tax purposes as a corporation, an amount computed by:

16 (A) adding:

17 (i) the amount reportable as income
18 [~~entered~~] on line 1c, Internal Revenue Service Form 1120; and

19 (ii) the amounts reportable as income
20 [~~entered~~] on lines 4 through 10, Internal Revenue Service Form
21 1120; and

22 (B) subtracting:

23 (i) bad debt expensed for federal income
24 tax purposes that corresponds to items of gross receipts included
25 in Subsection (c)(1)(A) for the current reporting period or a past
26 reporting period;

27 (ii) to the extent included in Subsection

1 (c)(1)(A), foreign royalties and foreign dividends, including
2 amounts determined under Section 78 or Sections 951-964, Internal
3 Revenue Code;

4 (iii) to the extent included in Subsection
5 (c)(1)(A), net distributive income from a taxable entity and a
6 passive entity, as described by Section 171.0003, [~~partnerships and~~
7 ~~from trusts and limited liability companies]~~ treated as
8 partnerships or [~~for federal income tax purposes and net~~
9 ~~distributive income from limited liability companies and~~
10 ~~corporations treated]~~ as S corporations for federal income tax
11 purposes;

12 (iv) allowable deductions from Internal
13 Revenue Service Form 1120, Schedule C, to the extent the relating
14 dividend income is included in total revenue;

15 (v) to the extent included in Subsection
16 (c)(1)(A), items of income attributable to an entity that is a
17 disregarded entity for federal income tax purposes; and

18 (vi) to the extent included in Subsection
19 (c)(1)(A), other amounts authorized by this section;

20 (2) for a taxable entity treated for federal income
21 tax purposes as a partnership, an amount computed by:

22 (A) adding:

23 (i) the amount reportable as income
24 [~~entered~~] on line 1c, Internal Revenue Service Form 1065;

25 (ii) the amounts reportable as income
26 [~~entered~~] on lines 4, 6, and [~~through~~] 7, Internal Revenue Service
27 Form 1065; [~~and~~]

1 (iii) the amounts reportable as income
2 ~~[entered]~~ on lines 3a and 5 ~~[2]~~ through 11, Internal Revenue Service
3 Form 1065, Schedule K; ~~and~~

4 (iv) the amounts reportable as income on
5 line 17, Internal Revenue Service Form 8825; and

6 (v) the amounts reportable as income on
7 line 11, plus line 2 or line 45, Internal Revenue Service Form 1040,
8 Schedule F; and

9 (B) subtracting:

10 (i) bad debt expensed for federal income
11 tax purposes that corresponds to items of gross receipts included
12 in Subsection (c)(2)(A) for the current reporting period or a past
13 reporting period;

14 (ii) to the extent included in Subsection
15 (c)(2)(A), foreign royalties and foreign dividends, including
16 amounts determined under Section 78 or Sections 951-964, Internal
17 Revenue Code;

18 (iii) to the extent included in Subsection
19 (c)(2)(A), net distributive income from a taxable entity and a
20 passive entity, as described by Section 171.0003, [~~partnerships and~~
21 ~~from trusts and limited liability companies]~~ treated as
22 partnerships or [~~for federal income tax purposes and net~~
23 ~~distributive income from limited liability companies and~~
24 ~~corporations treated]~~ as S corporations for federal income tax
25 purposes;

26 (iv) to the extent included in Subsection
27 (c)(2)(A), items of income attributable to an entity that is a

1 disregarded entity for federal income tax purposes; and

2 (v) to the extent included in Subsection
3 (c)(2)(A), other amounts authorized by this section; or

4 (3) for a taxable entity other than a taxable entity
5 treated for federal income tax purposes as a corporation or
6 partnership, an amount determined in a manner substantially
7 equivalent to the amount for Subdivision (1) or (2) determined by
8 rules that the comptroller shall adopt.

9 (d) Subject to Section 171.1014, a taxable entity
10 [~~corporation~~] that is part of a federal consolidated group shall
11 compute its total revenue under Subsection (c) as if it had filed a
12 separate return for federal income tax purposes.

13 (e) A taxable entity that owns an interest in a passive
14 entity [~~that is not included in a group report under Section~~
15 ~~171.1014~~] shall include in the taxable entity's total revenue the
16 taxable entity's share of the net income of the passive entity, but
17 only to the extent the net income of the passive entity was not
18 generated by the margin of any other taxable entity.

19 (g) A taxable entity shall exclude from its total revenue,
20 to the extent included under Subsection (c)(1)(A), (c)(2)(A), or
21 (c)(3), only the following flow-through funds that are mandated by
22 contract to be distributed to other entities:

23 (1) sales commissions to nonemployees, including
24 split-fee real estate commissions;

25 (2) the tax basis as determined under the Internal
26 Revenue Code of securities underwritten; and

27 (3) subcontracting payments handled by the taxable

1 entity to provide services, labor, or materials in connection with
2 the actual or proposed design, construction, remodeling, or repair
3 of improvements on real property, technical studies or analyses of
4 real property, or the location of the boundaries of real property.

5 (g-3) A taxable entity that provides legal services shall
6 exclude from its total revenue [~~, to the extent included under~~
7 ~~Subsection (c)(1)(A), (c)(2)(A), or (c)(3)]:~~

8 (1) to the extent included under Subsection (c)(1)(A),
9 (c)(2)(A), or (c)(3), the following flow-through funds that are
10 mandated by law, contract, or fiduciary duty to be distributed to
11 the claimant by the claimant's attorney or to other entities on
12 behalf of a claimant by the claimant's attorney:

13 (A) damages due the claimant;

14 (B) funds subject to a lien or other contractual
15 obligation arising out of the representation, other than fees owed
16 to the attorney;

17 (C) funds subject to a subrogation interest or
18 other third-party contractual claim; and

19 (D) fees paid an attorney in the matter who is not
20 a member, partner, shareholder, or employee of the taxable entity;

21 (2) to the extent included under Subsection (c)(1)(A),
22 (c)(2)(A), or (c)(3), reimbursement of the taxable entity's
23 expenses incurred in prosecuting a claimant's matter that are
24 specific to the matter and that are not general operating expenses;
25 and

26 (3) [~~the actual out-of-pocket expenses of the~~
27 ~~attorney, not to exceed~~] \$500 per pro bono services case handled by

1 the attorney, [of providing pro bono legal services to a person,]
2 but only if the attorney maintains records of the pro bono services
3 for auditing purposes in accordance with the manner in which those
4 services are reported to the State Bar of Texas.

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

10 (h) If the taxable entity belongs to an affiliated group,
11 the taxable entity may not exclude payments described by Subsection
12 (f), (g), (g-1), (g-2), ~~[or]~~ (g-3), or (g-4) that are made to
13 entities that are members of the affiliated group.

14 (n) Except as provided by Subsection (o), a taxable entity
15 that is a health care provider shall exclude from its total
16 revenue~~[, to the extent included under Subsection (c)(1)(A),~~
17 ~~(c)(2)(A), or (c)(3)]~~:

18 (1) to the extent included under Subsection (c)(1)(A),
19 (c)(2)(A), or (c)(3), the total amount of payments the health care
20 provider received:

21 (A) under the Medicaid program, Medicare
22 program, Indigent Health Care and Treatment Act (Chapter 61, Health
23 and Safety Code), and Children's Health Insurance Program (CHIP);

24 (B) for professional services provided in
25 relation to a workers' compensation claim under Title 5, Labor
26 Code; and

27 (C) for professional services provided to a

1 beneficiary rendered under the TRICARE military health system; and

2 (2) the actual cost to the health care provider for any
3 uncompensated care provided, but only if the provider maintains
4 records of the uncompensated care for auditing purposes and, if the
5 provider later receives payment for all or part of that care, the
6 provider adjusts the amount excluded for the tax year in which the
7 payment is received.

8 (o) A health care provider that is a health care institution
9 shall exclude from its total revenue~~[, to the extent included under~~
10 ~~Subsection (c)(1)(A), (c)(2)(A), or (c)(3),]~~ 50 percent of the
11 amounts described by Subsection (n).

12 (t) The comptroller shall adopt rules as necessary to
13 implement the legislative intent of the provisions prescribed by
14 this section.

15 SECTION 13. Section 171.1011(1)(1), Tax Code, as effective
16 January 1, 2008, is amended to read as follows:

17 (1) "Sales commission" means:

18 (A) any form of compensation paid to a person for
19 engaging in an act for which a license is required by Chapter 1101,
20 Occupations Code; or ~~and~~

21 (B) compensation paid to a sales representative
22 by a principal in an amount that is based on the amount or level of
23 certain orders for or sales of the principal's product and that the
24 principal is required to report on Internal Revenue Service Form
25 1099-MISC.

26 SECTION 14. Section 171.1012(a)(3)(A), Tax Code, as
27 effective January 1, 2008, is amended to read as follows:

1 (A) "Tangible personal property" means:

2 (i) personal property that can be seen,
3 weighed, measured, felt, or touched or that is perceptible to the
4 senses in any other manner;

5 (ii) films, sound recordings, videotapes,
6 live and prerecorded television and radio programs, books, and
7 other similar property embodying words, ideas, concepts, images, or
8 sound, without regard to the means or methods of distribution or the
9 medium in which the property is embodied, [~~by the creator of the~~
10 ~~property~~] for which, as costs are incurred in producing the
11 property, it is intended or is reasonably likely that any
12 [~~tangible~~] medium in which the property is embodied will be
13 mass-distributed by the creator or any one or more third parties in
14 a form that is not substantially altered; and

15 (iii) a computer program, as defined by
16 Section 151.0031.

17 SECTION 15. Sections 171.1012(c), (g), (h), and (k), Tax
18 Code, as effective January 1, 2008, are amended to read as follows:

19 (c) The cost of goods sold includes all direct costs of
20 acquiring or producing the goods, including:

21 (1) labor costs;

22 (2) cost of materials that are an integral part of
23 specific property produced;

24 (3) cost of materials that are consumed in the
25 ordinary course of performing production activities;

26 (4) handling costs, including costs attributable to
27 processing, assembling, repackaging, and inbound transportation

1 costs;

2 (5) storage costs, including the costs of carrying,
3 storing, or warehousing property, subject to Subsection (e);

4 (6) depreciation, depletion, and amortization,
5 reported on the federal income tax return on which the report under
6 this chapter is based, to the extent associated with and necessary
7 for the production of goods, including recovery described by
8 Section 197, Internal Revenue Code;

9 (7) the cost of renting or leasing equipment,
10 facilities, or real property directly used for the production of
11 the goods, including pollution control equipment and intangible
12 drilling and dry hole costs;

13 (8) the cost of repairing and maintaining equipment,
14 facilities, or real property directly used for the production of
15 the goods, including pollution control devices;

16 (9) costs attributable to research, experimental,
17 engineering, and design activities directly related to the
18 production of the goods, including all research or experimental
19 expenditures described by Section 174, Internal Revenue Code;

20 (10) geological and geophysical costs incurred to
21 identify and locate property that has the potential to produce
22 minerals;

23 (11) taxes paid in relation to acquiring or producing
24 any material, or taxes paid in relation to services that are a
25 direct cost of production;

26 (12) the cost of producing or acquiring electricity
27 sold; and

1 (13) a contribution to a partnership in which the
2 taxable entity owns an interest that is used to fund activities, the
3 costs of which would otherwise be treated as cost of goods sold of
4 the partnership, but only to the extent that those costs are related
5 to goods distributed to the taxable entity as goods-in-kind in the
6 ordinary course of production activities rather than being sold.

7 (g) A taxable entity that is allowed a subtraction by this
8 section for a cost of goods sold and that is subject to Section
9 263A, 460, or 471, Internal Revenue Code, may ~~[shall]~~ capitalize
10 that cost in the same manner and to the same extent that the taxable
11 entity capitalized that cost on its federal income tax return or may
12 expense those costs ~~[is required or allowed to capitalize the cost~~
13 ~~under federal law and regulations]~~, except for costs excluded under
14 Subsection (e), or in accordance with Subsections (c), (d), and
15 (f). If the taxable entity elects to capitalize costs, it must
16 capitalize each cost allowed under this section that it capitalized
17 on its federal income tax return. If the taxable entity later
18 elects to begin expensing a cost that may be allowed under this
19 section as a cost of goods sold, the entity may not deduct any cost
20 in ending inventory from a previous report. If the taxable entity
21 elects to expense a cost of goods sold that may be allowed under
22 this section, a cost incurred before the first day of the period on
23 which the report is based may not be subtracted as a cost of goods
24 sold. If the taxable entity elects to expense a cost of goods sold
25 and later elects to capitalize that cost of goods sold, a cost
26 expensed on a previous report may not be capitalized.

27 (h) A taxable entity shall determine its cost of goods sold,

1 except as otherwise provided by this section, in accordance with
2 the methods used on the federal income tax return on which the
3 report under this chapter is based [~~permitted by federal statutes~~
4 ~~and regulations~~]. This subsection does not affect the type or
5 category of cost of goods sold that may be subtracted under this
6 section.

7 (k) Notwithstanding any other provision of this section, if
8 the taxable entity is a lending institution that offers loans to the
9 public and elects to subtract cost of goods sold, the entity, other
10 than an entity primarily engaged in an activity described by
11 category 5932 of the 1987 Standard Industrial Classification Manual
12 published by the federal Office of Management and Budget, may
13 subtract as a cost of goods sold an amount equal to interest
14 expense. For purposes of this subsection, an entity engaged in
15 lending to unrelated parties solely for agricultural production
16 offers loans to the public.

17 SECTION 16. Section 171.1013, Tax Code, as effective
18 January 1, 2008, is amended by amending Subsections (a), (b), and
19 (c) and adding Subsections (a-1) and (a-2) to read as follows:

20 (a) Except as otherwise provided by this section, "wages and
21 cash compensation" means the amount entered in the Medicare wages
22 and tips box of Internal Revenue Service Form W-2 or any subsequent
23 form with a different number or designation that substantially
24 provides the same information. The term also includes, to the
25 extent not included above:

26 (1) net distributive income from a taxable entity
27 treated as a partnership [~~partnerships and from trusts and limited~~

1 ~~liability companies treated as partnerships]~~ for federal income tax
2 purposes, but only if the person receiving the distribution is a
3 natural person;

4 (2) net distributive income from limited liability
5 companies and corporations treated as S corporations for federal
6 income tax purposes, but only if the person receiving the
7 distribution is a natural person; ~~and]~~

8 (3) stock awards and stock options deducted for
9 federal income tax purposes; and

10 (4) net distributive income from a limited liability
11 company treated as a sole proprietorship for federal income tax
12 purposes, but only if the person receiving the distribution is a
13 natural person.

14 (a-1) Notwithstanding the actual amount of wages and cash
15 compensation paid by a taxable entity to its officers, directors,
16 owners, partners, and employees, and notwithstanding Subsection
17 (c), a taxable entity may not include under Subsection (a)(1) more
18 than an amount equal to the product of \$300,000, or the amount
19 determined under Section 171.006, per 12-month period on which
20 margin is based, multiplied by the number of natural persons owning
21 an interest in the partnership.

22 (a-2) For purposes of Subsection (a-1), the number of
23 natural persons owning an interest in a partnership is the sum of
24 the number of partners in the partnership who are natural persons
25 and the number of natural persons who own an interest, directly or
26 indirectly, in an entity that is a partner in the partnership,
27 except that any natural person who is a partner and who also

1 directly or indirectly owns an interest in an entity that is a
2 partner in the partnership may only be counted once in determining
3 the number of natural persons owning an interest in the
4 partnership.

5 (b) Subject to Section 171.1014, a taxable entity that
6 elects to subtract compensation for the purpose of computing its
7 taxable margin under Section 171.101 may subtract an amount equal
8 to:

9 (1) subject to the limitation in Subsection (c), all
10 wages and cash compensation paid by the taxable entity to its
11 officers, directors, owners, partners, and employees; and

12 (2) the cost of all benefits, to the extent deductible
13 for federal income tax purposes, the taxable entity provides to its
14 officers, directors, owners, partners, and employees, including
15 workers' compensation benefits, health care, employer
16 contributions made to employees' health savings accounts, and
17 retirement [~~to the extent deductible for federal income tax~~
18 ~~purposes~~].

19 (c) Notwithstanding the actual amount of wages and cash
20 compensation paid by a taxable entity to its officers, directors,
21 owners, partners, and employees, a taxable entity may not include
22 more than \$300,000, or the amount determined under Section 171.006,
23 per 12-month period on which margin is based, for any person in the
24 amount of wages and cash compensation it determines under this
25 section [~~Section 171.101~~]. If a person is paid by more than one
26 entity of a combined group, the combined group may not subtract in
27 relation to that person a total of more than \$300,000, or the amount

1 determined under Section 171.006, per 12-month period on which
2 margin is based.

3 SECTION 17. Section 171.1014, Tax Code, as effective
4 January 1, 2008, is amended by amending Subsections (b), (d), and
5 (f) and adding Subsections (d-1), (h), and (i) to read as follows:

6 (b) The combined group is a single taxable entity for
7 purposes of the application of the tax imposed under this chapter,
8 including Section 171.002(d).

9 (d) For purposes of Section 171.101, a combined group shall
10 make an election to subtract either cost of goods sold or
11 compensation that applies to all of its members. Regardless of the
12 election, the taxable margin of the combined group may not exceed 70
13 percent of the combined group's total revenue from its entire
14 business, as provided by Section 171.101(a)(1)(A).

15 (d-1) A member of a combined group may claim as cost of goods
16 sold those costs that qualify under Section 171.1012 if the goods
17 for which the costs are incurred are owned by another member of the
18 combined group.

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

21 (1) determining the compensation for each of its
22 members as provided by Section 171.1013 as if each member were an
23 individual taxable entity, subject to the limitation prescribed by
24 Section 171.1013(c);

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

27 (3) subtracting from the amount determined under

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

5 (h) Each taxable entity that is part of a combined group
6 report shall, for purposes of determining margin and apportionment,
7 include its activities for the same period used by the combined
8 group.

9 (i) Each member of the combined group shall be jointly and
10 severally liable for the tax of the combined group.

11 SECTION 18. Section 171.1015, Tax Code, as effective
12 January 1, 2008, is amended to read as follows:

13 Sec. 171.1015. REPORTING FOR CERTAIN PARTNERSHIPS IN TIERED
14 PARTNERSHIP ARRANGEMENT. (a) In this section, "tiered partnership
15 arrangement" means an ownership structure in which all of the
16 interests in one taxable entity treated as a partnership or
17 ~~[partnership, trust, or limited liability company that is treated~~
18 ~~for federal income taxes as a partnership or a limited liability~~
19 ~~company treated as]~~ an S corporation for federal income tax
20 purposes (a "lower tier entity" ~~[an "upper tier partnership"]~~) are
21 owned by one or more other taxable entities (an "upper ~~[a "lower~~
22 ~~tier entity"]~~). A tiered partnership arrangement may have two or
23 more tiers.

24 (b) In addition to the tax it is required to pay under this
25 chapter on its own taxable margin, a taxable entity that is an upper
26 ~~[a lower]~~ tier entity may include, for purposes of calculating its
27 own taxable margin, the total revenue ~~[pay the tax on the taxable~~

1 ~~margin]~~ of a lower tier entity [~~higher tier partnership~~] if the
2 lower tier entity [~~higher tier partnership~~] submits a report to the
3 comptroller showing the amount of total revenue [~~taxable margin~~]
4 that each higher [~~lower~~] tier entity that owns it should include
5 within the higher [~~lower~~] tier entity's own taxable margin
6 calculation, according to the ownership [~~profits~~] interest of the
7 higher [~~lower~~] tier entity. [~~An upper tier partnership is not~~
8 ~~required to pay tax under this chapter on any taxable margin~~
9 ~~reported under this section.~~]

10 (c) This section does not apply to that percentage of the
11 total revenue [~~taxable margin~~] attributable to a higher [~~lower~~]
12 tier entity by a lower tier entity [~~an upper tier partnership~~] if
13 the higher [~~lower~~] tier entity is not subject to the tax under this
14 chapter. In this case, the lower tier entity [~~higher tier~~
15 ~~partnership~~] is liable for the tax on its taxable margin.

16 (d) The comptroller shall adopt rules to administer this
17 section.

18 SECTION 19. Section 171.1055(b), Tax Code, as effective
19 January 1, 2008, is amended to read as follows:

20 (b) In apportioning margin, receipts derived from
21 transactions between individual members of a combined group that
22 are excluded under Section 171.1014(c)(3) may not be included in
23 the receipts of the taxable entity from its business done in this
24 state as determined under Section 171.103, except that receipts
25 ultimately derived from the sale of tangible personal property
26 between individual members of a combined group where one member
27 party to the transaction does not have nexus in this state shall be

1 included in the receipts of the taxable entity from its business
2 done in this state as determined under Section 171.103 to the extent
3 that the member of the combined group that does not have nexus in
4 this state resells the tangible personal property without
5 substantial modification to a purchaser in this state. "Receipts
6 ultimately derived from the sale" means the amount paid for the
7 tangible personal property by the third party purchaser.

8 SECTION 20. Section 171.106, Tax Code, as effective January
9 1, 2008, is amended by adding Subsection (f) to read as follows:

10 (f) Notwithstanding Section 171.1055, if a loan or security
11 is treated as inventory of the seller for federal income tax
12 purposes, the gross proceeds of the sale of that loan or security
13 are considered gross receipts.

14 SECTION 21. Section 171.111, Tax Code, as effective January
15 1, 2008, is amended to read as follows:

16 Sec. 171.111. TEMPORARY CREDIT ON TAXABLE MARGIN. (a) On
17 the first report originally due under this chapter on or after
18 January 1, 2008, [~~Not later than March 1, 2007,~~] a taxable entity
19 must [~~may~~] notify the comptroller in writing of its intent to
20 [~~preserve its right to~~] take a credit in an amount allowed by this
21 section on the tax due on taxable margin. The taxable entity may
22 thereafter elect to claim the credit for the current year and future
23 year at or before the original due date of any report due after
24 January 1, 2008 [~~2007~~], until the taxable entity revokes the
25 election or this section expires, whichever is earlier. A taxable
26 entity may claim the credit for not more than 20 consecutive
27 privilege periods beginning with the first report originally due

1 under this chapter on or after January 1, 2008 [2007]. A taxable
2 entity may make only one election under this section and the
3 election may not be conveyed, assigned, or transferred to another
4 entity.

5 (b) The credit allowed under this section for any privilege
6 period is computed by:

7 (1) determining the amount of the business loss
8 carryforwards of the taxable entity under Section 171.110(e), as
9 that section applied to annual reports originally due before
10 January 1, 2008, that were not exhausted on a report originally due
11 under this chapter before January 1, 2008~~[, as of the end of the~~
12 ~~taxable entity's accounting year ending in 2006, of the difference~~
13 ~~between (i) the taxable entity's deductible temporary differences~~
14 ~~and net operating loss carryforwards, net of related valuation~~
15 ~~allowance amounts, shown on the taxable entity's books and records~~
16 ~~on the last day of its taxable year ending in 2006, and (ii) the~~
17 ~~taxable entity's taxable temporary differences as shown on those~~
18 ~~books and records on that date. The amount of other net deferred~~
19 ~~tax items may be less than zero. For the purpose of computing the~~
20 ~~amount of the taxable entity's other net deferred tax items, any~~
21 ~~credit carryforward allowed under this chapter shall be excluded~~
22 ~~from the amount of deductible temporary differences to the extent~~
23 ~~such credit carryforward amount, net of any related valuation~~
24 ~~allowance amount, is otherwise included in the taxable entity's~~
25 ~~deductible temporary differences, net of related valuation~~
26 ~~allowance amounts, shown on the taxable entity's books and records~~
27 ~~on the last day of the taxable entity's taxable year ending in~~

1 2006];

2 (2) ~~[apportioning the amount determined under~~
3 ~~Subdivision (1) to this state in the same manner taxable margin is~~
4 ~~apportioned under Section 171.106 on the first report due on or~~
5 ~~after January 1, 2007;~~

6 ~~[(3)]~~ multiplying the amount determined under
7 Subdivision (1) ~~[(2)]~~ by:

8 (A) 2.25 [10] percent for reports originally due
9 on or after January 1, 2008, and before January 1, 2018; and

10 (B) 7.75 percent for reports originally due on or
11 after January 1, 2018, and before September 1, 2027; and

12 (3) [(4)] multiplying the amount determined under
13 Subdivision (2) ~~[(3)]~~ by 4.5 percent ~~[the tax rate prescribed by~~
14 ~~Section 171.002(a)(2)].~~

15 (c) ~~[A taxable entity that notifies the comptroller of its~~
16 ~~intent to preserve its right to take a credit allowed by this~~
17 ~~section shall submit with its notice of intent a statement of the~~
18 ~~amount determined under Subsection (b)(1).]~~ The comptroller may
19 request that the taxable entity submit, with each ~~[in the]~~ annual
20 report ~~[for each succeeding privilege period]~~ in which the taxable
21 entity is eligible to take a credit, information relating to the
22 amount determined under Subsection (b)(1). The taxable entity
23 shall submit in the form and content the comptroller requires any
24 information relating to ~~[the assets and liabilities that determine~~
25 ~~the amount of the credit,~~] the amount determined under Subsection
26 (b)(1) ~~[,~~] or any other matter relevant to the computation of the
27 credit for which the taxable entity is eligible.

1 (d) A credit that a taxable entity is entitled to under this
2 section may [~~does~~] not be conveyed [~~convey~~], [~~and may not be~~]
3 assigned, or transferred[~~, in relation to a transaction in which~~
4 ~~the taxable entity is purchased by another entity~~]. A taxable
5 entity loses the right to claim the credit if the entity changes
6 combined groups after June 30, 2007.

7 (d-1) A taxable entity, other than a combined group, may not
8 claim the credit under this section unless the taxable entity was,
9 on May 1, 2006, subject to the tax imposed by this chapter as this
10 chapter existed on that date. A taxable entity that is a combined
11 group may claim the credit for each member entity that was, on May
12 1, 2006, subject to the tax imposed by this chapter as this chapter
13 existed on that date and shall compute the amount of the credit for
14 that member as provided by this section.

15 (d-2) The amount of credit claimed, including any unused
16 credit carried forward, may not exceed the amount of franchise tax
17 due for the report. Unused credits may not be carried forward to
18 reports originally due on or after September 1, 2027.

19 (e) This section expires September 1, 2027 [~~2026~~].

20 SECTION 22. Section 171.1121(b), Tax Code, as effective
21 January 1, 2008, is amended to read as follows:

22 (b) Except as otherwise provided by this section, a taxable
23 entity shall use the same accounting methods to apportion margin as
24 used in computing margin [~~reportable federal taxable income~~].

25 SECTION 23. Section 171.1532(b), Tax Code, as effective
26 January 1, 2008, is amended to read as follows:

27 (b) The tax covering the regular annual period, other than a

1 regular annual period included on the initial report, is based on
2 the business done by the taxable entity during the period beginning
3 with the day after the last date upon which taxable margin or net
4 taxable earned surplus on a previous report was based and ending
5 with its last accounting period ending date for federal income tax
6 purposes in the year before the year in which the report is
7 originally due.

8 SECTION 24. Section 171.201(a), Tax Code, as effective
9 January 1, 2008, is amended to read as follows:

10 (a) Except as provided by Section 171.2022, a taxable entity
11 on which the franchise tax is imposed shall file an initial report
12 with the comptroller containing:

13 (1) financial information of the taxable entity
14 necessary to compute the tax under this chapter [~~showing the~~
15 ~~financial condition of the taxable entity on the day that is the~~
16 ~~last day of a calendar month and that is nearest to the end of the~~
17 ~~taxable entity's first year of business~~];

18 (2) the name and address of:

19 (A) each officer, director, and manager of the
20 taxable entity;

21 (B) for a limited partnership, each general
22 partner;

23 (C) for a general partnership or limited
24 liability partnership, each managing partner or, if there is not a
25 managing partner, each partner; or

26 (D) for a trust, each trustee;

27 (3) the name and address of the agent of the taxable

1 entity designated under Section 171.354; and

2 (4) other information required by the comptroller.

3 SECTION 25. Sections 171.203(a), (b), (d), and (e), Tax
4 Code, as effective January 1, 2008, are amended to read as follows:

5 (a) A corporation or limited liability company on which the
6 franchise tax is imposed, regardless of whether the corporation or
7 limited liability company is required to pay any tax, shall file a
8 report with the comptroller containing:

9 (1) the name of each corporation or limited liability
10 company in which the corporation or limited liability company
11 filing the report owns a 10 percent or greater interest and the
12 percentage owned by the corporation or limited liability company;

13 (2) the name of each corporation or limited liability
14 company that owns a 10 percent or greater interest in the
15 corporation or limited liability company filing the report;

16 (3) the name, title, and mailing address of each
17 person who is an officer or director of the corporation or limited
18 liability company on the date the report is filed and the expiration
19 date of each person's term as an officer or director, if any;

20 (4) the name and address of the agent of the
21 corporation or limited liability company designated under Section
22 171.354; and

23 (5) the address of the corporation's or limited
24 liability company's principal office and principal place of
25 business.

26 (b) The corporation or limited liability company shall file
27 the report once a year on a form prescribed by the comptroller.

1 (d) The corporation or limited liability company shall send
2 a copy of the report to each person named in the report under
3 Subsection (a)(3) who is not currently employed by the corporation
4 or limited liability company or a related corporation or limited
5 liability company listed in Subsection (a)(1) or (2). An officer or
6 director of the corporation or limited liability company or another
7 authorized person must sign the report under a certification that:

8 (1) all information contained in the report is true
9 and correct to the best of the person's knowledge; and

10 (2) a copy of the report has been mailed to each person
11 identified in this subsection on the date the return is filed.

12 (e) If a person's name is included in a report under
13 Subsection (a)(3) and the person is not an officer or director of
14 the corporation or limited liability company on the date the report
15 is filed, the person may file with the comptroller a sworn statement
16 disclaiming the person's status as shown on the report. The
17 comptroller shall maintain a record of statements filed under this
18 subsection and shall make that information available on request
19 using the same procedures the comptroller uses for other requests
20 for public information.

21 SECTION 26. Section 171.204, Tax Code, is amended by adding
22 Subsection (c) to read as follows:

23 (c) The comptroller may require any entity to file
24 information as necessary to verify that the entity is not subject to
25 the tax imposed under this chapter.

26 SECTION 27. Subchapter E, Chapter 171, Tax Code, is amended
27 by adding Section 171.2125 to read as follows:

1 Sec. 171.2125. CALCULATING COST OF GOODS OR COMPENSATION IN
2 STAFF LEASING ARRANGEMENTS. In calculating cost of goods sold or
3 compensation, a taxable entity that is a client company of a staff
4 leasing services company shall rely on information provided by the
5 staff leasing services company on a form promulgated by the
6 comptroller or an invoice.

7 SECTION 28. Subchapter E, Chapter 171, Tax Code, is amended
8 by adding Section 171.213 to read as follows:

9 Sec. 171.213. BIENNIAL REPORT BY COMPTROLLER. (a) Before
10 the beginning of each regular session of the legislature, the
11 comptroller shall submit to the governor, the lieutenant governor,
12 and the speaker of the house of representatives a report:

13 (1) that states:

14 (A) the total compensation reported by entities
15 filing annual reports under this chapter, including wages and cash
16 compensation, employee benefits, active duty military
17 compensation, and undocumented worker compensation;

18 (B) the margin reported by entities filing annual
19 reports under this chapter, including the method by which this
20 figure was calculated;

21 (C) the apportionment factor reported by
22 entities filing annual reports under this chapter;

23 (D) the taxable margin reported by entities
24 filing annual reports under this chapter, including the method by
25 which this figure was calculated;

26 (E) the tax due reported by entities filing
27 annual reports under this chapter, including the tax rate applied;

1 (F) tax credits claimed by entities filing annual
2 reports under this chapter; and

3 (G) the net tax due reported by entities filing
4 annual reports under this chapter; and

5 (2) that states, to the extent the comptroller
6 otherwise has collected the information:

7 (A) the total amount of gross revenue reported by
8 entities filing annual reports under this chapter, including
9 specific categories of gross revenue;

10 (B) the total amount of deductions from gross
11 revenue claimed by entities filing annual reports under this
12 chapter, including specific categories of deductions; and

13 (C) the total cost of goods sold reported by
14 entities filing annual reports under this chapter, including
15 details of the direct costs of acquiring or producing goods and the
16 costs related to the acquisition and production of goods.

17 (b) The report shall, to the extent possible, categorize the
18 information required by this section using:

19 (1) the two-digit standard industrial classification
20 or North American industrial classification of entities filing
21 annual reports under this chapter; and

22 (2) the gross revenue reported by entities filing
23 annual reports under this chapter.

24 (c) The comptroller may not include in the report
25 information that is confidential by law.

26 SECTION 29. Subchapter E, Chapter 171, Tax Code, is amended
27 by adding Section 171.214 to read as follows:

Sec. 171.214. SMALL BUSINESS TAX ADVISORY COMMITTEE. (a)

The Small Business Tax Advisory Committee will conduct an annual study of the effects of the tax levied under this chapter on small businesses in the state. The study must take into consideration:

(1) job growth or loss attributable to the franchise tax;

(2) the impact of the franchise tax on wages;

(3) the number of businesses that ceased to operate due to the franchise tax, if any;

(4) the number of businesses that changed business organization to avoid payment of the franchise tax, if any;

(5) the number of businesses that relocated their operations, headquarters, or other facilities due to the franchise tax, if any; and

(6) any other items posed by the comptroller.

(b) The comptroller shall chair the Small Business Tax Advisory Committee and shall appoint:

(1) at the direction of the speaker of the house, one member of the house of representatives;

(2) at the direction of the lieutenant governor, one member of the senate;

(3) at least one certified public accountant; and

(4) at least three small business owners.

(c) The comptroller, by rule, shall 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 no later than January 1,

1 2009.

2 SECTION 30. Subchapter G, Chapter 171, Tax Code, is amended
3 by adding Sections 171.3015 and 171.3125 to read as follows:

4 Sec. 171.3015. FORFEITURE OF CERTIFICATE OR REGISTRATION OF
5 TAXABLE ENTITY. The comptroller may, for the same reasons and using
6 the same procedures the comptroller uses in relation to the
7 forfeiture of a corporation's charter or certificate of authority,
8 forfeit the certificate or registration of a taxable entity.

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

15 (b) The secretary of state may adopt rules to implement this
16 section.

17 SECTION 31. Section 171.309, Tax Code, is amended to read as
18 follows:

19 Sec. 171.309. FORFEITURE BY SECRETARY OF STATE. The
20 secretary of state may forfeit the charter, ~~[or]~~ certificate, or
21 registration of a taxable entity ~~[of authority of a corporation]~~
22 if:

23 (1) the secretary receives the comptroller's
24 certification under Section 171.302 ~~[of this code]~~; and

25 (2) the taxable entity ~~[corporation]~~ does not revive
26 its forfeited ~~[corporate]~~ privileges within 120 days after the date
27 that the ~~[corporate]~~ privileges were forfeited~~[, and~~

1 ~~[(3) the corporation does not have assets from which a~~
2 ~~judgment for any tax, penalty, or court costs imposed by this~~
3 ~~chapter may be satisfied].~~

4 SECTION 32. Subchapter H, Chapter 171, Tax Code, is amended
5 by adding Section 171.356 to read as follows:

6 Sec. 171.356. BILLING OR INVOICING THE TAX AS A FEE, CHARGE,
7 REIMBURSEMENT, OR OTHER ITEM. Any person who includes in a bill or
8 invoice a fee, charge, reimbursement, or other item and represents
9 in the bill or invoice that the fee, charge, reimbursement, or other
10 item is for the purpose of full or partial payment or reimbursement
11 of the tax under this chapter:

12 (1) holds the entire amount of the fee, charge,
13 reimbursement, or other item collected in trust for the benefit of
14 the state; and

15 (2) is liable to the state for the entire amount of the
16 fee, charge, reimbursement, or other item collected plus any
17 accrued penalties and interest on the amount collected.

18 The remission of the amount collected from a third party
19 buyer hereunder shall be deemed to be a voluntary payment of tax by
20 the third party buyer, and shall be in addition to the amount
21 otherwise owed and payable by the seller under this chapter.

22 SECTION 33. No entity covered by Chapter 171, Tax Code, may
23 separately state any reductions in price on a customer's bill.

24 SECTION 34. Chapter 171, Tax Code, is amended by adding
25 Subchapter K to read as follows:

26 SUBCHAPTER K. TAX CREDIT FOR CERTAIN ART DONATIONS

27 Sec. 171.521. ENTITLEMENT TO CREDIT. A taxable entity is

1 entitled to a credit in the amount and under the conditions and
2 limitations provided by this subchapter against the tax imposed
3 under this chapter.

4 Sec. 171.522. QUALIFICATION. (a) In this section, "art
5 museum" and "museum" mean an institution that:

6 (1) is operated by a nonprofit organization or public
7 entity primarily to display fine visual works of art; and

8 (2) has a permanent collection with a value that
9 exceeds \$100 million.

10 (b) A taxable entity qualifies for a credit under this
11 subchapter if the taxable entity donates to an art museum in this
12 state that is open to the public a work of art that:

13 (1) the taxable entity acquired before January 1,
14 2002, and has owned for at least five years; and

15 (2) the museum intends to include in the museum's
16 permanent collection.

17 (c) A taxable entity that is a member of an affiliated group
18 may not claim a credit under this section for art donated to a
19 museum that is a member of that affiliated group.

20 Sec. 171.523. AMOUNT; LIMITATIONS. (a) The amount of the
21 credit is equal to the total appraised value of each work of art
22 described by Section 171.522 that is donated during the privilege
23 period.

24 (b) The credit claimed for each privilege period may not
25 exceed the amount of franchise tax due, before any other applicable
26 tax credits, for the privilege period.

27 (c) A taxable entity may claim a credit under this

1 subchapter for an expenditure made during an accounting period only
2 against the tax owed for the corresponding privilege period.

3 (d) A taxable entity may not carry over an expenditure made
4 during a privilege period to a subsequent privilege period.

5 (e) A taxable entity may not convey, assign, or transfer a
6 credit under this subchapter to another entity unless all of the
7 assets of the taxable entity are conveyed, assigned, or transferred
8 in the same transaction.

9 Sec. 171.524. APPLICATION FOR CREDIT. A taxable entity
10 must apply for a credit under this subchapter on or with the tax
11 report for the period for which the credit is claimed.

12 Sec. 171.525. RULES. The comptroller shall adopt rules
13 necessary to implement this subchapter.

14 SECTION 35. Section 403.109, Government Code, is amended by
15 amending Subsection (c) and adding Subsection (c-1) to read as
16 follows:

17 (c) Subject to Subsection (c-1), beginning [~~Beginning~~] in
18 the state fiscal year that begins after the first tax year in which
19 the average school district maintenance and operations tax rate is
20 not more than \$1.00 per \$100 of taxable value, any money remaining
21 in the fund after a sufficient amount of money is appropriated in
22 that state fiscal year to maintain an average school district
23 maintenance and operations tax rate of \$1.00 per \$100 of taxable
24 value may be appropriated only as follows:

25 (1) two-thirds of the money appropriated from the fund
26 may be appropriated only for a purpose that will result in a further
27 reduction of the average school district maintenance and operations

1 tax rate; and

2 (2) one-third of the money appropriated from the fund
3 may be appropriated only for the purpose of increasing the level of
4 equalization of school district enrichment tax effort to the extent
5 that limits reliance by school districts on local property tax
6 effort and decreases the enrichment tax rates of districts.

7 (c-1) Beginning in the state fiscal year that begins after
8 the first tax year in which the average school district maintenance
9 and operations tax rate is not more than 50 cents per \$100 of
10 taxable value, any money remaining in the fund after a sufficient
11 amount of money is appropriated in that state fiscal year to
12 maintain an average school district maintenance and operations tax
13 rate of 50 cents per \$100 of taxable value may be appropriated only
14 as follows:

15 (1) one-third of the money appropriated from the fund
16 may be appropriated only for a purpose that will result in a further
17 reduction of the average school district maintenance and operations
18 tax rate;

19 (2) one-third of the money appropriated from the fund
20 may be appropriated only for the purpose of increasing the level of
21 equalization of school district enrichment tax effort to the extent
22 that limits reliance by school districts on local property tax
23 effort and decreases the enrichment tax rates of districts; and

24 (3) one-third of the money appropriated from the fund
25 may be appropriated only for the purpose of reducing franchise tax
26 rates under Chapter 171, Tax Code.

27 SECTION 36. Section 17, Chapter 1, Acts of the 79th

1 Legislature, 3rd Called Session, 2006, is amended to read as
2 follows:

3 Sec. 17. ~~[(a) The repeal of Section 171.111, Tax Code, by
4 this Act does not affect a credit that accrued under that section
5 before the effective date of this Act.~~

6 ~~[(b)]~~ A corporation that has any unused credits established
7 ~~[accrued]~~ before the effective date of this Act under Section
8 171.111, Tax Code, may claim those unused credits on or with the tax
9 report for the period in which the credits were established
10 ~~[accrued]~~, and the former law under which the corporation
11 established ~~[accrued]~~ the credits is continued in effect for
12 purposes of determining the amount of the credits the corporation
13 may claim and the manner in which the corporation may claim the
14 credits.

15 SECTION 37. Sections 18(b) through (f), Chapter 1, Acts of
16 the 79th Legislature, 3rd Called Session, 2006, are amended to read
17 as follows:

18 (b) This section does not affect a credit authorized by a
19 provision listed in Subsection (a) of this section that was
20 established ~~[accrued]~~ under Chapter 171, Tax Code, before the
21 effective date of this Act or a credit that continues to accrue
22 under Section 19 of this Act.

23 (c) A corporation that has any unused credits established
24 ~~[accrued]~~ before the effective date of this Act under a provision
25 other than Subchapter O, P, or Q, Chapter 171, Tax Code, may claim
26 those unused credits on or with the tax report for the period in
27 which the credits were established ~~[accrued]~~, and the former law

1 under which the corporation established [~~accrued~~] the credits is
2 continued in effect for purposes of determining the amount of the
3 credits the corporation may claim and the manner in which the
4 corporation may claim the credits.

5 (d) A corporation that has any unused credits established
6 [~~accrued~~] before the effective date of this Act under Subchapter O,
7 Chapter 171, Tax Code, may claim those unused credits on or with the
8 tax report for the period in which the credit was established
9 [~~accrued~~]. However, if the corporation was allowed to carry
10 forward unused credits under that subchapter, the corporation may
11 continue to apply those credits on or with each consecutive report
12 until the earlier of the date the credit would have expired under
13 the terms of Subchapter O, Chapter 171, Tax Code, had it continued
14 in existence, or December 31, 2027, and the former law under which
15 the corporation established [~~accrued~~] the credits is continued in
16 effect for purposes of determining the amount of the credits the
17 corporation may claim and the manner in which the corporation may
18 claim the credits.

19 (e) A corporation that has any unused credits established
20 [~~accrued~~] before the effective date of this Act under Subchapter P,
21 Chapter 171, Tax Code, may claim those unused credits on or with the
22 tax report for the period in which the credit was established
23 [~~accrued~~]. However, if the corporation was allowed to carry
24 forward unused credits under that subchapter, the corporation may
25 continue to apply those credits on or with each consecutive report
26 until the earlier of the date the credit would have expired under
27 the terms of Subchapter P, Chapter 171, Tax Code, had it continued

1 in existence, or December 31, 2012, and the former law under which
2 the corporation established [~~accrued~~] the credits is continued in
3 effect for purposes of determining the amount of the credits the
4 corporation may claim and the manner in which the corporation may
5 claim the credits.

6 (f) A corporation that has any unused credits established
7 [~~accrued~~] before the effective date of this Act under Subchapter Q,
8 Chapter 171, Tax Code, may claim those unused credits on or with the
9 tax report for the period in which the credit was established
10 [~~accrued~~]. However, if the corporation was allowed to carry
11 forward unused credits under that subchapter, the corporation may
12 continue to apply those credits on or with each consecutive report
13 until the earlier of the date the credit would have expired under
14 the terms of Subchapter Q, Chapter 171, Tax Code, had it continued
15 in existence, or December 31, 2012, and the former law under which
16 the corporation established [~~accrued~~] the credits is continued in
17 effect for purposes of determining the amount of the credits the
18 corporation may claim and the manner in which the corporation may
19 claim the credits.

20 SECTION 38. (a) Section 22, Chapter 1, Acts of the 79th
21 Legislature, 3rd Called Session, 2006, is amended by amending
22 Subsection (b) and adding Subsections (b-1), (b-2), and (g) to read
23 as follows:

24 (b) For an entity becoming subject to the franchise tax
25 under this Act:

26 (1) margin or gross receipts occurring before June 1,
27 2006, may not be considered for purposes of determining taxable

1 margin or for apportionment purposes; and

2 (2) an entity subject to the franchise tax on January
3 1, 2008, that was not previously subject to the tax and for which
4 January 1, 2008, is not the beginning date, shall file an annual
5 report due May 15, 2008, based on the period:

6 (A) if the entity has an accounting period that
7 ends on or after January 1, 2007, and before June 1, 2007:

8 (i) beginning on the later of:

9 (a) June 1, 2006; or

10 (b) the date the entity was organized
11 in this state or, if a foreign entity, the date it began doing
12 business in this state; and

13 (ii) ending on the date that accounting
14 period ends in 2007;

15 (B) if the entity has an accounting period that
16 ends on or after June 1, 2007, and before December 31, 2007:

17 (i) beginning on the date that accounting
18 period begins; and

19 (ii) ending on the date that accounting
20 period ends in 2007; and

21 (C) if the entity has an accounting period that
22 ends on December 31, 2007, or if the entity does not have an
23 accounting period that ends in 2007:

24 (i) beginning on the later of:

25 (a) January 1, 2007; or

26 (b) the date the entity was organized
27 in the state or, if a foreign entity, the date it began doing

1 business in this state; and

2 (ii) ending on December 31, 2007 ~~[, and~~

3 ~~[(3) an entity subject to the franchise tax as it~~
4 ~~existed before the effective date of this Act at any time after~~
5 ~~December 31, 2006, and before January 1, 2008, but not subject to~~
6 ~~the franchise tax on January 1, 2008, shall file a final report for~~
7 ~~the privilege of doing business at any time after June 30, 2007, and~~
8 ~~before January 1, 2008, based on the period:~~

9 ~~[(A) beginning on the later of:~~

10 ~~[(i) January 1, 2007; or~~

11 ~~[(ii) the date the entity was organized in~~
12 ~~this state or, if a foreign entity, the date it began doing business~~
13 ~~in this state; and~~

14 ~~[(B) ending on the date the entity became no~~
15 ~~longer subject to the franchise tax].~~

16 (b-1) This subsection applies to an entity that:

17 (1) is not doing business in this state on January 1,
18 2008;

19 (2) would be subject to the franchise tax as amended by
20 this Act if it were doing business in this state on or after January
21 1, 2008, but would not have been subject to the franchise tax as it
22 existed before being amended by this Act; and

23 (3) was doing business in this state at any time after
24 June 30, 2007, and before January 1, 2008.

25 (b-2) An entity to which Subsection (b-1) applies shall, for
26 the privilege of doing business in this state at any time after June
27 30, 2007, and before January 1, 2008, file a final report and pay an

1 additional tax equal to the appropriate rate under Section 171.002,
2 Tax Code, as amended by this Act, of the entity's taxable margin
3 based on the period:

4 (1) beginning on the later of:

5 (A) January 1, 2007; or

6 (B) the date the entity was organized in this
7 state or, if a foreign entity, the date it began doing business in
8 this state; and

9 (2) ending on the date the entity became no longer
10 subject to the tax.

11 (g) Except as provided by Subsections (b-1) and (b-2) of
12 this section, an entity becoming subject to the franchise tax under
13 this Act that is part of a combined group report shall, for purposes
14 of determining margin and apportionment, include its activity for
15 the same period used by the combined group.

16 (b) This section takes effect immediately if this Act
17 receives a vote of two-thirds of all the members elected to each
18 house, as provided by Section 39, Article III, Texas Constitution.
19 If this Act does not receive the vote necessary for immediate
20 effect, this section takes effect September 1, 2007.

21 SECTION 39. Sections 23(b) and (f), Chapter 1, Acts of the
22 79th Legislature, 3rd Called Session, 2006, are amended to read as
23 follows:

24 (b) The information report required under this section must
25 contain the same information that an entity required to file the
26 report would have submitted in its report due to the comptroller in
27 2006 under Chapter 171, Tax Code, if the changes made by this Act to

1 Chapter 171, Tax Code, had been in effect January 1, 2006. The
2 information report shall also contain the total of maintenance and
3 operations school property taxes paid by the entity to school
4 districts in Texas in the 2005 [~~2006, and 2007~~] tax year [~~years~~].
5 The comptroller shall provide the forms and instructions to the
6 entities required to file a report under this section.

7 (f) The comptroller:

8 (1) shall identify the entities described by
9 Subsection (d) of this section;

10 (2) shall prepare all forms and instructions required
11 for those entities to file their information reports as required by
12 this section;

13 (3) shall provide those forms and instructions to
14 those entities on or after November 15, 2006, but before December 2,
15 2006;

16 (4) shall require the entities to submit their
17 information reports on or before February 15, 2007 [~~and February~~
18 ~~15, 2008~~];

19 (5) may not grant any extensions for filing the
20 information reports; and

21 (6) shall report to the governor, the lieutenant
22 governor, and the members of the legislature, on or before April 1,
23 2007, [~~and April 1, 2008,~~] the results of the information reports,
24 stating the amount of revenue generated by the tax under Chapter
25 171, Tax Code, [~~in each year,~~] the amount that would have been
26 generated from the entities submitting information reports under
27 this section if the changes made by this Act to Chapter 171, Tax

1 Code, had been in effect January 1, 2006, and the school maintenance
2 and operations property taxes paid by the entities in the 2005 [~~7~~
3 ~~2006, and 2007~~] tax year [~~years~~].

4 SECTION 40. The following provisions of the Tax Code are
5 repealed:

6 (1) Section 171.0011(e), as effective January 1, 2008;

7 (2) Section 171.1011(p)(4-b), as effective January 1,
8 2008;

9 (3) Section 171.1014(g), as effective January 1, 2008;

10 and

11 (4) Section 171.2035, as effective January 1, 2008.

12 SECTION 41. This Act applies only to a report originally due
13 on or after the effective date of this Act.

14 SECTION 42. Except as otherwise provided by this Act, this
15 Act takes effect January 1, 2008.