

By: Keffer, Ritter, Otto, Paxton, Pitts

H.B. No. 3928

Substitute the following for H.B. No. 3928:

By: Ritter

C.S.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 (8), (9), (10), and (17) and adding Subdivisions (11-a) and (13-a) to read as follows:

(8) "Controlling interest" means:

(A) for a corporation, either 80 percent or more, owned directly or indirectly, of the total combined voting power of all classes of stock of the corporation, or 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, 80 percent or more, owned directly or indirectly, of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity; and

(C) for a limited liability company, either 80 percent or more, owned directly or indirectly, of the total membership interest of the limited liability company or 80 percent or more, owned directly or indirectly, of the beneficial ownership interest in the membership interest of the limited liability company.

(9) "Internal Revenue Code" means the Internal Revenue

Code of 1986 in effect for the federal tax year beginning on January 1, 2007 [2006], not including any changes made by federal law after that date, and any regulations adopted under that code applicable to that period.

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

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

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

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

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

(13-a) "Security" has the meaning assigned by Section 475(c)(2), Internal Revenue Code, and includes instruments described by Sections 475(e)(2)(B), (C), and (D) of that code.

(17) "Unitary business" means a single economic enterprise that is made up of separate parts of a single entity or

1 of a commonly controlled group of entities that are sufficiently
2 interdependent, integrated, and interrelated through their
3 activities so as to provide a synergy and mutual benefit that
4 produces a sharing or exchange of value among them and a significant
5 flow of value to the separate parts. In determining whether a
6 unitary business exists, the comptroller shall consider any
7 relevant factor, including whether:

8 (A) the activities of the group members[÷
9 [~~(i)~~] are in the same general line, such as
10 manufacturing, wholesaling, retailing of tangible personal
11 property, insurance, transportation, or finance; [~~or~~]

12 (B) the activities of the group members [~~(ii)~~]
13 are steps in a vertically structured enterprise or process, such as
14 the steps involved in the production of natural resources,
15 including exploration, mining, refining, and marketing; or [~~and~~]

16 (C) [~~(B)~~] the members are functionally
17 integrated through the exercise of strong centralized management,
18 such as authority over purchasing, financing, product line,
19 personnel, and marketing.

20 SECTION 2. Section 171.0002, Tax Code, as effective January
21 1, 2008, is amended to read as follows:

22 Sec. 171.0002. DEFINITION OF TAXABLE ENTITY. (a) Except as
23 otherwise provided by this section, "taxable entity" means a
24 partnership, limited liability partnership, corporation, banking
25 corporation, savings and loan association, limited liability
26 company, business trust, professional association, business
27 association, joint venture, joint stock company, holding company,

1 or other legal entity. The term includes a combined group. A joint
2 venture does not include joint operating or co-ownership
3 arrangements meeting the requirements of Treasury Regulation
4 Section 1.761-2(a)(3) that elect out of federal partnership
5 treatment as provided by Section 761(a), Internal Revenue Code.

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

7 (1) a sole proprietorship;

8 (2) a general partnership:

9 (A) the direct ownership of which is entirely
10 composed of natural persons; and

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

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

15 or

16 (4) an entity that is exempt from taxation under
17 Subchapter B.

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

19 (1) a grantor trust as defined by Sections 671 and
20 7701(a)(30)(E), Internal Revenue Code, all of the grantors and
21 beneficiaries of which are natural persons or charitable entities
22 as described in Section 501(c)(3), Internal Revenue Code, excluding
23 a trust taxable as a business entity pursuant to Treasury
24 Regulation Section 301.7701-4(b);

25 (2) an estate of a natural person as defined by Section
26 7701(a)(30)(D), Internal Revenue Code, excluding an estate taxable
27 as a business entity pursuant to Treasury Regulation Section

301.7701-4(b);

(3) an escrow;

(4) ~~[a family limited partnership that is a passive entity in which at least 80 percent of the interests are held, directly or indirectly, by members of the same family, including an individual's ancestors, lineal descendants, spouse, and brothers and sisters by the whole or half blood, and the estate of any of these persons, and that is a limited partnership.]~~

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

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

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

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

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

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

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

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

~~[(7) a trust that is a passive entity.]~~

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

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

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

6 ~~[(D) that is organized as a trust and is~~
7 ~~described in Section 7701(a)(30)(E), Internal Revenue Code,~~

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

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

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

21 (5) ~~[(9)]~~ a real estate mortgage investment conduit
22 (REMIC), as defined by Section 860D, Internal Revenue Code;

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

25 (7) a trust qualified under Section 401(a), Internal
26 Revenue Code; or

27 (8) a trust or other entity that is exempt under

1 Section 501(c)(9), Internal Revenue Code.

2 (d) An entity that can file as a sole proprietorship for
3 federal tax purposes is not a sole proprietorship for purposes of
4 Subsection (b)(1) and is not exempt under that subsection if the
5 entity is formed in a manner under the statutes of this state, ~~[or]~~
6 another state, or a foreign country that limit the liability of the
7 entity.

8 SECTION 3. Section 171.0003(a), Tax Code, as effective
9 January 1, 2008, is amended to read as follows:

10 (a) An entity is a passive entity only if:

11 (1) the entity is a general or limited partnership or a
12 trust, other than a business trust;

13 (2) during the period on which margin is based, the
14 entity's federal gross income consists of at least 90 percent of the
15 following income:

16 (A) dividends, interest, foreign currency
17 exchange gain, periodic and nonperiodic payments with respect to
18 notional principal contracts, option premiums, cash settlement or
19 termination payments with respect to a financial instrument, and
20 income from a limited liability company;

21 (B) distributive shares of partnership income to
22 the extent that those distributive shares of income are greater
23 than zero;

24 (C) capital gains from the sale of real property
25 that does not produce income and is not used in the production of
26 income, other than income described by Paragraph (D), gains from
27 the sale of commodities traded on a commodities exchange, and gains

1 from the sale of securities; and

2 (D) royalties, bonuses, or delay rental income
3 from mineral properties and income from other nonoperating mineral
4 interests; and

5 (3) the entity does not receive more than 10 percent of
6 its federal gross income from conducting an active trade or
7 business.

8 SECTION 4. Section 171.0004(e), Tax Code, as effective
9 January 1, 2008, is amended to read as follows:

10 (e) For purposes of this section:

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

14 (2) payment of compensation to employees or
15 independent contractors for financial or legal services reasonably
16 necessary for the operation of the entity does not constitute
17 conduct of an active trade or business; and

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

21 SECTION 5. Section 171.001, Tax Code, as effective January
22 1, 2008, is amended by adding Subsection (c) to read as follows:

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

27 SECTION 6. Sections 171.0011(a) and (b), Tax Code, as

1 effective January 1, 2008, are amended to read as follows:

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

6 (b) The additional tax is equal to the appropriate rate
7 under Section 171.002 of the taxable entity's taxable margin
8 computed on the period beginning on the day after the last day for
9 which the tax imposed on taxable margin or net taxable earned
10 surplus was computed and ending on the date the taxable entity is no
11 longer subject to the tax imposed under this chapter.

12 SECTION 7. Sections 171.002(a), (b), (c), and (d), Tax
13 Code, as effective January 1, 2008, are amended to read as follows:

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

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

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

22 (1) the total revenue from its activities in retail or
23 wholesale trade is greater than the total revenue from its
24 activities in trades other than the retail and wholesale trades;

25 (2) except as provided by Subsection (c-1), less than
26 50 percent of the total revenue from activities in retail or
27 wholesale trade comes from the sale of products it produces or

1 products produced by an entity that is part of an affiliated group
2 to which the taxable entity also belongs; and

3 (3) the taxable entity does not provide retail or
4 wholesale utilities, including telecommunications services, ~~and~~
5 electricity, or gas.

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

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

10 (2) the amount of the taxable entity's total revenue
11 from its entire business is less than or equal to \$600,000
12 ~~[\$300,000]~~ or the amount determined under Section 171.006 per
13 12-month period on which margin is based.

14 SECTION 8. The heading to Section 171.006, Tax Code, as
15 effective January 1, 2008, is amended to read as follows:

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

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

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

27 SECTION 10. Section 171.101(d), Tax Code, as effective

January 1, 2008, is amended to read as follows:

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

SECTION 11. Section 171.1011, Tax Code, as effective January 1, 2008, is amended by amending Subsections (b), (c), (d), (e), (g-3), (n), and (o) and adding Subsection (t) to read as follows:

(b) In this section, a reference to an amount reportable as income ~~[entered]~~ on a line number on an Internal Revenue Service form includes the corresponding amount reportable as income ~~[entered]~~ on a variant of the form, or a subsequent form, with a different line number. ~~[The comptroller shall adopt rules as necessary to accomplish the legislative intent prescribed by this subsection and Subsection (a).]~~

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

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

(A) adding:

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

(ii) the amounts reportable as income ~~[entered]~~ on lines 4 through 10, Internal Revenue Service Form

1120; and

(B) subtracting:

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

(ii) to the extent included in Subsection (c)(1)(A), foreign royalties and foreign dividends, including amounts determined under Section 78 or Sections 951-964, Internal Revenue Code;

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

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

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

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

(2) for a taxable entity treated for federal income

1 tax purposes as a partnership, an amount computed by:

2 (A) adding:

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

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

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

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

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

16 (B) subtracting:

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

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

25 (iii) to the extent included in Subsection
26 (c)(2)(A), net distributive income from a taxable entity and a
27 passive entity, as described by Section 171.0003, [partnerships and

1 ~~from trusts and limited liability companies]~~ treated as
2 partnerships or ~~[for federal income tax purposes and net~~
3 ~~distributive income from limited liability companies and~~
4 ~~corporations treated]~~ as S corporations for federal income tax
5 purposes;

6 (iv) to the extent included in Subsection
7 (c)(2)(A), items of income attributable to an entity that is a
8 disregarded entity for federal income tax purposes; and

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

11 (3) for a taxable entity other than a taxable entity
12 treated for federal income tax purposes as a corporation or
13 partnership, an amount determined in a manner substantially
14 equivalent to the amount for Subdivision (1) or (2) determined by
15 rules that the comptroller shall adopt.

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

20 (e) A taxable entity that owns an interest in a passive
21 entity ~~[that is not included in a group report under Section~~
22 ~~171.1014]~~ shall include in the taxable entity's total revenue the
23 taxable entity's share of the net income of the passive entity, but
24 only to the extent the net income of the passive entity was not
25 generated by the margin of any other taxable entity.

26 (g-3) A taxable entity that provides legal services shall
27 exclude from its total revenue~~[, to the extent included under~~

~~Subsection (c)(1)(A), (c)(2)(A), or (c)(3)]:~~

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

(A) damages due the claimant;

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

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

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

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

(3) the actual out-of-pocket expenses of the attorney, not to exceed \$500 per case, of providing pro bono legal services to a person, but only if the attorney maintains records of the pro bono services for auditing purposes in accordance with the manner in which those services are reported to the State Bar of Texas.

(n) Except as provided by Subsection (o), a taxable entity that is a health care provider shall exclude from its total revenue~~[, to the extent included under Subsection (c)(1)(A),~~

1 ~~(c)(2)(A), or (c)(3)]~~:

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

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

8 (B) for professional services provided in
9 relation to a workers' compensation claim under Title 5, Labor
10 Code; and

11 (C) for professional services provided to a
12 beneficiary rendered under the TRICARE military health system; and

13 (2) the actual cost to the health care provider for any
14 uncompensated care provided, but only if the provider maintains
15 records of the uncompensated care for auditing purposes and, if the
16 provider later receives payment for all or part of that care, the
17 provider adjusts the amount excluded for the tax year in which the
18 payment is received.

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

23 (t) The comptroller shall adopt rules as necessary to
24 accomplish the legislative intent prescribed by this section.

25 SECTION 12. Section 171.1011(1)(1), Tax Code, as effective
26 January 1, 2008, is amended to read as follows:

27 (1) "Sales commission" means:

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

4 (B) compensation paid to a sales representative
5 by a principal in an amount that is based on the amount or level of
6 certain orders for or sales of the principal's product and that the
7 principal is required to report on Internal Revenue Service Form
8 1099-MISC.

9 SECTION 13. Section 171.1012(a)(3)(A), Tax Code, as
10 effective January 1, 2008, is amended to read as follows:

11 (A) "Tangible personal property" means:

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

15 (ii) films, sound recordings, videotapes,
16 live and prerecorded television and radio programs, books, and
17 other similar property embodying words, ideas, concepts, images, or
18 sound, without regard to the means or methods of distribution or the
19 medium in which the property is embodied, ~~[by the creator of the~~
20 ~~property]~~ for which, as costs are incurred in producing the
21 property, it is intended or is reasonably likely that any
22 ~~[tangible]~~ medium in which the property is embodied will be
23 mass-distributed by the creator or any one or more third parties in
24 a form that is not substantially altered; and

25 (iii) a computer program, as defined by
26 Section 151.0031.

27 SECTION 14. Sections 171.1012(c), (g), (h), and (k), Tax

Code, as effective January 1, 2008, are amended to read as follows:

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

(1) labor costs;

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

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

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

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

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

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

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

(9) costs attributable to research, experimental, engineering, and design activities directly related to the

1 production of the goods, including all research or experimental
2 expenditures described by Section 174, Internal Revenue Code;

3 (10) geological and geophysical costs incurred to
4 identify and locate property that has the potential to produce
5 minerals;

6 (11) taxes paid in relation to acquiring or producing
7 any material, or taxes paid in relation to services that are a
8 direct cost of production;

9 (12) the cost of producing or acquiring electricity
10 sold; and

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

17 (g) A taxable entity that is allowed a subtraction by this
18 section for a cost of goods sold and that is subject to Section
19 263A, 460, or 471, Internal Revenue Code, may ~~[shall]~~ capitalize
20 that cost in the same manner and to the same extent that the taxable
21 entity capitalized that cost on its federal income tax return or may
22 expense those costs ~~[is required or allowed to capitalize the cost~~
23 ~~under federal law and regulations]~~, except for costs excluded under
24 Subsection (e), or in accordance with Subsections (c), (d), and
25 (f). If the taxable entity elects to capitalize costs, it must
26 capitalize each cost allowed under this section that it capitalized
27 on its federal income tax return. If the taxable entity later

1 elects to begin expensing a cost that may be allowed under this
2 section as a cost of goods sold, the entity may not deduct any cost
3 in ending inventory from a previous report. If the taxable entity
4 elects to expense a cost of goods sold that may be allowed under
5 this section, a cost incurred before the first day of the period on
6 which the report is based may not be subtracted as a cost of goods
7 sold. If the taxable entity elects to expense a cost of goods sold
8 and later elects to capitalize that cost of goods sold, a cost
9 expensed on a previous report may not be capitalized.

10 (h) A taxable entity shall determine its cost of goods sold,
11 except as otherwise provided by this section, in accordance with
12 the methods used on the federal income tax return on which the
13 report under this chapter is based [~~permitted by federal statutes~~
14 ~~and regulations~~]. This subsection does not affect the type or
15 category of cost of goods sold that may be subtracted under this
16 section.

17 (k) Notwithstanding any other provision of this section, if
18 the taxable entity is a lending institution that offers loans to the
19 public and elects to subtract cost of goods sold, the entity, other
20 than an entity primarily engaged in an activity described by
21 category 5932 of the 1987 Standard Industrial Classification Manual
22 published by the federal Office of Management and Budget, may
23 subtract as a cost of goods sold an amount equal to interest
24 expense.

25 SECTION 15. Sections 171.1013(a), (b), and (c), Tax Code,
26 as effective January 1, 2008, are amended to read as follows:

27 (a) Except as otherwise provided by this section, "wages and

1 cash compensation" means the amount entered in the Medicare wages
2 and tips box of Internal Revenue Service Form W-2 or any subsequent
3 form with a different number or designation that substantially
4 provides the same information. The term also includes, to the
5 extent not included above:

6 (1) net distributive income from partnerships and from
7 trusts and limited liability companies treated as partnerships for
8 federal income tax purposes, but only if the person receiving the
9 distribution is a natural person;

10 (2) net distributive income from limited liability
11 companies and corporations treated as S corporations for federal
12 income tax purposes, but only if the person receiving the
13 distribution is a natural person; ~~and~~

14 (3) stock awards and stock options deducted for
15 federal income tax purposes; and

16 (4) net distributive income from a limited liability
17 company treated as a sole proprietorship for federal income tax
18 purposes, but only if the person receiving the distribution is a
19 natural person.

20 (b) Subject to Section 171.1014, a taxable entity that
21 elects to subtract compensation for the purpose of computing its
22 taxable margin under Section 171.101 may subtract an amount equal
23 to:

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

27 (2) the cost of all benefits, to the extent deductible

1 for federal income tax purposes, the taxable entity provides to its
2 officers, directors, owners, partners, and employees, including
3 workers' compensation benefits, health care, employer
4 contributions made to employees' health savings accounts, and
5 retirement ~~[to the extent deductible for federal income tax~~
6 ~~purposes]~~.

7 (c) Notwithstanding the actual amount of wages and cash
8 compensation paid by a taxable entity to its officers, directors,
9 owners, partners, and employees, a taxable entity may not include
10 more than \$300,000, or the amount determined under Section 171.006,
11 per 12-month period on which margin is based, for any person in the
12 amount of wages and cash compensation it determines under this
13 section ~~[Section 171.101]~~. If a person is paid by more than one
14 entity of a combined group, the combined group may not subtract in
15 relation to that person a total of more than \$300,000, or the amount
16 determined under Section 171.006, per 12-month period on which
17 margin is based.

18 SECTION 16. Section 171.1014, Tax Code, as effective
19 January 1, 2008, is amended by amending Subsections (b), (d), and
20 (f) and adding Subsections (d-1), (h), and (i) to read as follows:

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

24 (d) For purposes of Section 171.101, a combined group shall
25 make an election to subtract either cost of goods sold or
26 compensation that applies to all of its members. Regardless of the
27 election, the taxable margin of the combined group may not exceed 70

1 percent of the combined group's total revenue from its entire
2 business, as provided by Section 171.101(a)(1)(A).

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

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

9 (1) determining the compensation for each of its
10 members as provided by Section 171.1013 as if each member were an
11 individual taxable entity, subject to the limitation prescribed by
12 Section 171.1013(c);

13 (2) adding the amounts of compensation determined
14 under Subdivision (1) together; and

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

20 (h) Each taxable entity that is part of a combined group
21 report shall, for purposes of determining margin and apportionment,
22 include its activities for the same period used by the combined
23 group.

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

26 SECTION 17. Section 171.1015, Tax Code, as effective
27 January 1, 2008, is amended to read as follows:

1 Sec. 171.1015. REPORTING FOR CERTAIN PARTNERSHIPS IN TIERED
 2 PARTNERSHIP ARRANGEMENT. (a) In this section, "tiered partnership
 3 arrangement" means an ownership structure in which all of the
 4 interests in one partnership, trust, or limited liability company
 5 that is treated for federal income taxes as a partnership or a
 6 limited liability company treated as an S corporation for federal
 7 income tax purposes (a "lower tier entity" [~~an "upper tier~~
 8 ~~partnership"~~]) are owned by one or more other taxable entities (an
 9 "upper [~~a "lower~~] tier entity"). A tiered partnership arrangement
 10 may have two or more tiers.

11 (b) In addition to the tax it is required to pay under this
 12 chapter on its own taxable margin, a taxable entity that is an upper
 13 [~~a lower~~] tier entity may pay the tax on the taxable margin of a
 14 lower tier entity [~~higher tier partnership~~] if the lower tier
 15 entity [~~higher tier partnership~~] submits a report to the
 16 comptroller showing the amount of taxable margin that each higher
 17 [~~lower~~] tier entity that owns it should include within the higher
 18 [~~lower~~] tier entity's own taxable margin, according to the profits
 19 interest of the higher [~~lower~~] tier entity. [~~An upper tier~~
 20 ~~partnership is not required to pay tax under this chapter on any~~
 21 ~~taxable margin reported under this section.~~]

22 (c) This section does not apply to that percentage of the
 23 taxable margin attributable to a higher [~~lower~~] tier entity by a
 24 lower tier entity [~~an upper tier partnership~~] if the higher [~~lower~~]
 25 tier entity is not subject to the tax under this chapter. In this
 26 case, the lower tier entity [~~higher tier partnership~~] is liable for
 27 the tax on its taxable margin.

1 (d) The comptroller shall adopt rules to administer this
2 section.

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

5 (b) In apportioning margin, receipts derived from
6 transactions between individual members of a combined group that
7 are excluded under Section 171.1014(c)(3) may not be included in
8 the receipts of the taxable entity from its business done in this
9 state as determined under Section 171.103, except that receipts
10 ultimately derived from the sale of tangible personal property
11 between individual members of a combined group where one member
12 party to the transaction does not have nexus in this state shall be
13 included in the receipts of the taxable entity from its business
14 done in this state as determined under Section 171.103 to the extent
15 that the member of the combined group that does not have nexus in
16 this state resells the tangible personal property without
17 substantial modification to a purchaser in this state. "Receipts
18 ultimately derived from the sale" means the amount paid for the
19 tangible personal property by the third party purchaser.

20 SECTION 19. Section 171.106, Tax Code, as effective January
21 1, 2008, is amended by adding Subsection (f) to read as follows:

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

26 SECTION 20. Section 171.111, Tax Code, as effective January
27 1, 2008, is amended to read as follows:

1 Sec. 171.111. TEMPORARY CREDIT ON TAXABLE MARGIN. (a) On
 2 the first report originally due under this chapter on or after
 3 January 1, 2008, [~~Not later than March 1, 2007,~~] a taxable entity
 4 must [~~may~~] notify the comptroller in writing of its intent to
 5 [~~preserve its right to~~] take a credit in an amount allowed by this
 6 section on the tax due on taxable margin. The taxable entity may
 7 thereafter elect to claim the credit for the current year and future
 8 year at or before the original due date of any report due after
 9 January 1, 2008 [~~2007~~], until the taxable entity revokes the
 10 election or this section expires, whichever is earlier. A taxable
 11 entity may claim the credit for not more than 20 consecutive
 12 privilege periods beginning with the first report originally due
 13 under this chapter on or after January 1, 2008 [~~2007~~]. A taxable
 14 entity may make only one election under this section and the
 15 election may not be conveyed, assigned, or transferred to another
 16 entity.

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

19 (1) determining the amount of the business loss
 20 carryforwards of the taxable entity under Section 171.110(e), as
 21 that section applied to annual reports originally due before
 22 January 1, 2008, that were not exhausted on a report originally due
 23 under this chapter before January 1, 2008 [~~, as of the end of the~~
 24 ~~taxable entity's accounting year ending in 2006, of the difference~~
 25 ~~between (i) the taxable entity's deductible temporary differences~~
 26 ~~and net operating loss carryforwards, net of related valuation~~
 27 ~~allowance amounts, shown on the taxable entity's books and records~~

1 ~~on the last day of its taxable year ending in 2006, and (ii) the~~
 2 ~~taxable entity's taxable temporary differences as shown on those~~
 3 ~~books and records on that date. The amount of other net deferred~~
 4 ~~tax items may be less than zero. For the purpose of computing the~~
 5 ~~amount of the taxable entity's other net deferred tax items, any~~
 6 ~~credit carryforward allowed under this chapter shall be excluded~~
 7 ~~from the amount of deductible temporary differences to the extent~~
 8 ~~such credit carryforward amount, net of any related valuation~~
 9 ~~allowance amount, is otherwise included in the taxable entity's~~
 10 ~~deductible temporary differences, net of related valuation~~
 11 ~~allowance amounts, shown on the taxable entity's books and records~~
 12 ~~on the last day of the taxable entity's taxable year ending in~~
 13 ~~2006];~~

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

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

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

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

24 (3) [(4)] multiplying the amount determined under
 25 Subdivision (2) ~~[(3)]~~ by 4.5 percent ~~[the tax rate prescribed by~~
 26 ~~Section 171.002(a)(2)]~~.

27 (c) ~~[A taxable entity that notifies the comptroller of its~~

1 ~~intent to preserve its right to take a credit allowed by this~~
 2 ~~section shall submit with its notice of intent a statement of the~~
 3 ~~amount determined under Subsection (b)(1).]~~ The comptroller may
 4 request that the taxable entity submit, with each ~~[in the]~~ annual
 5 report ~~[for each succeeding privilege period]~~ in which the taxable
 6 entity is eligible to take a credit, information relating to the
 7 amount determined under Subsection (b)(1). The taxable entity
 8 shall submit in the form and content the comptroller requires any
 9 information relating to ~~[the assets and liabilities that determine~~
 10 ~~the amount of the credit,~~ the amount determined under Subsection
 11 (b)(1) ~~[,]~~ or any other matter relevant to the computation of the
 12 credit for which the taxable entity is eligible.

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

19 (d-1) A taxable entity, other than a combined group, may not
 20 claim the credit under this section unless the taxable entity was,
 21 on May 1, 2006, subject to the tax imposed by this chapter as this
 22 chapter existed on that date. A taxable entity that is a combined
 23 group may claim the credit for each member entity that was, on May
 24 1, 2006, subject to the tax imposed by this chapter as this chapter
 25 existed on that date and shall compute the amount of the credit for
 26 that member as provided by this section.

27 (d-2) The amount of credit claimed, including any unused

1 credit carried forward, may not exceed the amount of franchise tax
2 due for the report. Unused credits may not be carried forward to
3 reports originally due on or after September 1, 2027.

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

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

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

10 SECTION 22. Section 171.1532(b), Tax Code, as effective
11 January 1, 2008, is amended to read as follows:

12 (b) The tax covering the regular annual period, other than a
13 regular annual period included on the initial report, is based on
14 the business done by the taxable entity during the period beginning
15 with the day after the last date upon which taxable margin or net
16 taxable earned surplus on a previous report was based and ending
17 with its last accounting period ending date for federal income tax
18 purposes in the year before the year in which the report is
19 originally due.

20 SECTION 23. Section 171.201(a), Tax Code, as effective
21 January 1, 2008, is amended to read as follows:

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

25 (1) financial information of the taxable entity
26 necessary to compute the tax under this chapter [~~showing the~~
27 ~~financial condition of the taxable entity on the day that is the~~

~~last day of a calendar month and that is nearest to the end of the taxable entity's first year of business];~~

(2) the name and address of:

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

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

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

(D) for a trust, each trustee;

(3) the name and address of the agent of the taxable entity designated under Section 171.354; and

(4) other information required by the comptroller.

SECTION 24. Sections 171.203(a), (b), (d), and (e), Tax Code, as effective January 1, 2008, are amended to read as follows:

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

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

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

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

5 (4) the name and address of the agent of the
6 corporation or limited liability company designated under Section
7 171.354; and

8 (5) the address of the corporation's or limited
9 liability company's principal office and principal place of
10 business.

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

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

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

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

24 (e) If a person's name is included in a report under
25 Subsection (a)(3) and the person is not an officer or director of
26 the corporation or limited liability company on the date the report
27 is filed, the person may file with the comptroller a sworn statement

1 disclaiming the person's status as shown on the report. The
2 comptroller shall maintain a record of statements filed under this
3 subsection and shall make that information available on request
4 using the same procedures the comptroller uses for other requests
5 for public information.

6 SECTION 25. Section 171.204, Tax Code, is amended by adding
7 Subsection (c) to read as follows:

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

11 SECTION 26. Subchapter G, Chapter 171, Tax Code, is amended
12 by adding Section 171.3015 to read as follows:

13 Sec. 171.3015. FORFEITURE OF CERTIFICATE OR REGISTRATION OF
14 TAXABLE ENTITY. The comptroller may, for the same reasons and using
15 the same procedures the comptroller uses in relation to the
16 forfeiture of a corporation's charter or certificate of authority,
17 forfeit the certificate or registration of a taxable entity.

18 SECTION 27. Section 171.309, Tax Code, is amended to read as
19 follows:

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

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

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

1 that the [~~corporate~~] privileges were forfeited[, ~~and~~

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

5 SECTION 28. Section 17, Chapter 1, Acts of the 79th
6 Legislature, 3rd Called Session, 2006, is amended to read as
7 follows:

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

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

20 SECTION 29. Sections 18(b) through (f), Chapter 1, Acts of
21 the 79th Legislature, 3rd Called Session, 2006, are amended to read
22 as follows:

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

1 (c) A corporation that has any unused credits established
2 ~~[accrued]~~ before the effective date of this Act under a provision
3 other than Subchapter O, P, or Q, Chapter 171, Tax Code, may claim
4 those unused credits on or with the tax report for the period in
5 which the credits were established ~~[accrued]~~, and the former law
6 under which the corporation established ~~[accrued]~~ the credits is
7 continued in effect for purposes of determining the amount of the
8 credits the corporation may claim and the manner in which the
9 corporation may claim the credits.

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

24 (e) A corporation that has any unused credits established
25 ~~[accrued]~~ before the effective date of this Act under Subchapter P,
26 Chapter 171, Tax Code, may claim those unused credits on or with the
27 tax report for the period in which the credit was established

1 ~~[accrued]~~. However, if the corporation was allowed to carry
2 forward unused credits under that subchapter, the corporation may
3 continue to apply those credits on or with each consecutive report
4 until the earlier of the date the credit would have expired under
5 the terms of Subchapter P, Chapter 171, Tax Code, had it continued
6 in existence, or December 31, 2012, and the former law under which
7 the corporation established ~~[accrued]~~ the credits is continued in
8 effect for purposes of determining the amount of the credits the
9 corporation may claim and the manner in which the corporation may
10 claim the credits.

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

25 SECTION 30. (a) Section 22, Chapter 1, Acts of the 79th
26 Legislature, 3rd Called Session, 2006, is amended by amending
27 Subsection (b) and adding Subsections (b-1), (b-2), and (g) to read

as follows:

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

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

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

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

(i) beginning on the later of:

(a) June 1, 2006; or

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

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

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

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

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

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

1 accounting period that ends in 2007:

2 (i) beginning on the later of:

3 (a) January 1, 2007; or

4 (b) the date the entity was organized
5 in the state or, if a foreign entity, the date it began doing
6 business in this state; and

7 (ii) ending on December 31, 2007 ~~and~~

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

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

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

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

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

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

22 (1) is not doing business in this state on January 1,
23 2008;

24 (2) would be subject to the franchise tax as amended by
25 this Act if it were doing business in this state on or after January
26 1, 2008, but would not have been subject to the franchise tax as it
27 existed before being amended by this Act; and

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

3 (b-2) An entity to which Subsection (b-1) applies shall, for
4 the privilege of doing business in this state at any time after June
5 30, 2007, and before January 1, 2008, file a final report and pay an
6 additional tax equal to the appropriate rate under Section 171.002,
7 Tax Code, as amended by this Act, of the entity's taxable margin
8 based on the period:

9 (1) beginning on the later of:

10 (A) January 1, 2007; or

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

14 (2) ending on the date the entity became no longer
15 subject to the tax.

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

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

26 SECTION 31. Sections 23(b) and (f), Chapter 1, Acts of the
27 79th Legislature, 3rd Called Session, 2006, are amended to read as

1 follows:

2 (b) The information report required under this section must
3 contain the same information that an entity required to file the
4 report would have submitted in its report due to the comptroller in
5 2006 under Chapter 171, Tax Code, if the changes made by this Act to
6 Chapter 171, Tax Code, had been in effect January 1, 2006. The
7 information report shall also contain the total of maintenance and
8 operations school property taxes paid by the entity to school
9 districts in Texas in the 2005 [~~2006, and 2007~~] tax year [~~years~~].
10 The comptroller shall provide the forms and instructions to the
11 entities required to file a report under this section.

12 (f) The comptroller:

13 (1) shall identify the entities described by
14 Subsection (d) of this section;

15 (2) shall prepare all forms and instructions required
16 for those entities to file their information reports as required by
17 this section;

18 (3) shall provide those forms and instructions to
19 those entities on or after November 15, 2006, but before December 2,
20 2006;

21 (4) shall require the entities to submit their
22 information reports on or before February 15, 2007[~~and February~~
23 ~~15, 2008~~];

24 (5) may not grant any extensions for filing the
25 information reports; and

26 (6) shall report to the governor, the lieutenant
27 governor, and the members of the legislature, on or before April 1,

1 2007, [~~and April 1, 2008,~~] the results of the information reports,
2 stating the amount of revenue generated by the tax under Chapter
3 171, Tax Code, [~~in each year,~~] the amount that would have been
4 generated from the entities submitting information reports under
5 this section if the changes made by this Act to Chapter 171, Tax
6 Code, had been in effect January 1, 2006, and the school maintenance
7 and operations property taxes paid by the entities in the 2005 [~~7~~
8 ~~2006, and 2007~~] tax year [~~years~~].

9 SECTION 32. The following provisions of the Tax Code are
10 repealed:

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

12 (2) Section 171.1014(g), as effective January 1, 2008;

13 and

14 (3) Section 171.2035, as effective January 1, 2008.

15 SECTION 33. This Act applies only to a report originally due
16 on or after the effective date of this Act.

17 SECTION 34. Except as otherwise provided by this Act, this
18 Act takes effect January 1, 2008.