

# SENATE AMENDMENTS

## 2<sup>nd</sup> Printing

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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.

ADOPTED

MAY 18 2007

*Henry Law*  
Secretary of the Senate

By: Ogden

H.B. No. 3928

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

By: 

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. The title of Chapter 171, Tax Code, is amended to read as follows:

CHAPTER 171. ELECTIVE FRANCHISE TAX

SECTION 2. Section 171.0001, Tax Code, as effective January 1, 2008, is amended by amending Subdivisions (6), (8), (9), (10), (15), and (17) and adding Subdivisions (11-a) and (13-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,

1 of the beneficial ownership interest in the voting stock of the  
2 corporation; ~~and~~

3 (B) for a partnership, association, trust, or  
4 other entity other than a limited liability company, more than 50  
5 [80] percent [or more], owned directly or indirectly, of the  
6 capital, profits, or beneficial interest in the partnership,  
7 association, trust, or other entity; and

8 (C) for a limited liability company, either more  
9 than 50 percent, owned directly or indirectly, of the total  
10 membership interest of the limited liability company or more than  
11 50 percent, owned directly or indirectly, of the beneficial  
12 ownership interest in the membership interest of the limited  
13 liability company.

14 (9) "Internal Revenue Code" means the Internal Revenue  
15 Code of 1986 in effect for the federal tax year beginning on January  
16 1, 2007 [2006], not including any changes made by federal law after  
17 that date, and any regulations adopted under that code applicable  
18 to that period.

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

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

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

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

5                   (D) provides financing to unrelated parties  
6 solely for agricultural production.

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

12                   (13-a) "Security," for purposes of Sections  
13 171.1011(g), 171.1011(g-2), and 171.106(f) only, has the meaning  
14 assigned by Section 475(c)(2), Internal Revenue Code, and includes  
15 instruments described by Sections 475(e)(2)(B), (C), and (D) of  
16 that code.

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

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

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

23                   (17) "Unitary business" means a single economic  
24 enterprise that is made up of separate parts of a single entity or  
25 of a commonly controlled group of entities that are sufficiently  
26 interdependent, integrated, and interrelated through their  
27 activities so as to provide a synergy and mutual benefit that

1 produces a sharing or exchange of value among them and a significant  
2 flow of value to the separate parts. In determining whether a  
3 unitary business exists, the comptroller shall consider any  
4 relevant factor, including whether:

5 (A) the activities of the group members[+  
6 [~~i~~] are in the same general line, such as  
7 manufacturing, wholesaling, retailing of tangible personal  
8 property, insurance, transportation, or finance; [~~e~~]

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

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

17 SECTION 3. Section 171.0002, Tax Code, as effective January  
18 1, 2008, is amended to read as follows:

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

1 Section 1.761-2(a)(3) that elect out of federal partnership  
2 treatment as provided by Section 761(a), Internal Revenue Code.

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

4 (1) a sole proprietorship;

5 (2) a general partnership:

6 (A) the direct ownership of which is entirely  
7 composed of natural persons; and

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

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

12 or

13 (4) an entity that is exempt from taxation under  
14 Subchapter B.

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

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

22 (2) an estate of a natural person as defined by Section  
23 7701(a)(30)(D), Internal Revenue Code, excluding an estate taxable  
24 as a business entity pursuant to Treasury Regulation Section  
25 301.7701-4(b);

26 (3) an escrow;

27 (4) ~~[a family limited partnership that is a passive~~

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

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

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

10 ~~[(C) treated as a partnership for federal income~~  
11 ~~tax purposes,~~

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

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

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

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

20 ~~[(6) a passive investment partnership that is a~~  
21 ~~passive entity and is a general partnership,~~

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

23 ~~[(A) that is taxable as a trust under Section~~  
24 ~~641, Internal Revenue Code,~~

25 ~~[(B) all of the beneficiaries of which are~~  
26 ~~natural persons or charitable entities as defined in Section~~  
27 ~~501(c)(3), Internal Revenue Code,~~



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

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

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

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

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

18                   (5) [(9)] a real estate mortgage investment conduit  
19 (REMIC), as defined by Section 860D, Internal Revenue Code;

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

22                   (7) a trust qualified under Section 401(a), Internal  
23 Revenue Code; or

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

26                   (d) An entity that can file as a sole proprietorship for  
27 federal tax purposes is not a sole proprietorship for purposes of

1 Subsection (b)(1) and is not exempt under that subsection if the  
2 entity is formed in a manner under the statutes of this state, ~~[or]~~  
3 another state, or a foreign country that limit the liability of the  
4 entity.

5 SECTION 4. Section 171.0003(a), Tax Code, as effective  
6 January 1, 2008, is amended to read as follows:

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

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

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

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

18 (B) distributive shares of partnership income to  
19 the extent that those distributive shares of income are greater  
20 than zero;

21 (C) capital gains from the sale of real property,  
22 gains from the sale of commodities traded on a commodities  
23 exchange, and gains from the sale of securities; and

24 (D) royalties, bonuses, or delay rental income  
25 from mineral properties and income from other nonoperating mineral  
26 interests; and

27 (3) the entity does not receive more than 10 percent of

1 its federal gross income from conducting an active trade or  
2 business.

3 SECTION 5. Section 171.0004(e), Tax Code, as effective  
4 January 1, 2008, is amended to read as follows:

5 (e) For purposes of this section:

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

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

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

16 SECTION 6. Section 171.001, Tax Code, as effective January  
17 1, 2008, is amended to read as follows:

18 Sec. 171.001. IMPOSITION OF TAX AT ELECTION OF TAXABLE  
19 ENTITY; NO LIABILITY FOR CHAPTER 172 FRANCHISE TAX [~~IMPOSED~~]. (a)  
20 Notwithstanding any other provision of this chapter, [~~A franchise~~  
21 ~~tax is imposed on~~] each taxable entity that does business in this  
22 state or that is chartered or organized in this state may elect to  
23 pay the tax imposed under this chapter instead of the tax imposed  
24 under Chapter 172.

25 (b) A taxable entity that elects to pay the tax imposed  
26 under this chapter is not liable for the tax imposed under Chapter  
27 172.

1           (c) The tax imposed under this chapter extends to the limits  
2 of the United States Constitution and the federal law adopted under  
3 the United States Constitution.

4           (d) The tax imposed under this section or Section 171.0011  
5 is not imposed on an entity if, during the period on which the  
6 report is based, the entity qualifies as a passive entity as defined  
7 by Section 171.0003.

8           SECTION 7. Sections 171.0011(a) and (b), Tax Code, as  
9 effective January 1, 2008, are amended to read as follows:

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

14           (b) The additional tax is equal to the appropriate rate  
15 under Section 171.002 of the taxable entity's taxable margin  
16 computed on the period beginning on the day after the last day for  
17 which the tax imposed on taxable margin or net taxable earned  
18 surplus was computed and ending on the date the taxable entity is no  
19 longer subject to the tax imposed under this chapter.

20           SECTION 8. Sections 171.002(a), (b), (c), and (d), Tax  
21 Code, as effective January 1, 2008, are amended to read as follows:

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

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

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

3 (1) the total revenue from its activities in retail or  
4 wholesale trade is greater than the total revenue from its  
5 activities in trades other than the retail and wholesale trades;

6 (2) except as provided by Subsection (c-1), less than  
7 50 percent of the total revenue from activities in retail or  
8 wholesale trade comes from the sale of products it produces or  
9 products produced by an entity that is part of an affiliated group  
10 to which the taxable entity also belongs; and

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

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

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

18 (2) the amount of the taxable entity's total revenue  
19 from its entire business is less than or equal to \$300,000 or the  
20 amount determined under Section 171.006 per 12-month period on  
21 which margin is based.

22 SECTION 9. Subchapter A, Chapter 171, Tax Code, is amended  
23 by adding Section 171.0021 to read as follows:

24 Sec. 171.0021. DISCOUNTS FROM TAX LIABILITY FOR SMALL  
25 BUSINESSES. (a) A taxable entity is entitled to a discount of the  
26 tax imposed under this chapter that the taxable entity is required  
27 to pay after determining its taxable margin under Section 171.101,

1 applying the appropriate rate of the tax under Section 171.002(a)  
2 or (b), and subtracting any other allowable credits, as follows:

3 (1) for a taxable entity for which the total revenue  
4 from its entire business is greater than \$300,000 but less than  
5 \$400,000, the taxable entity is entitled to a discount of 80  
6 percent;

7 (2) for a taxable entity for which the total revenue  
8 from its entire business is equal to or greater than \$400,000 but  
9 less than \$500,000, the taxable entity is entitled to a discount of  
10 60 percent;

11 (3) for a taxable entity for which the total revenue  
12 from its entire business is equal to or greater than \$500,000 but  
13 less than \$700,000, the taxable entity is entitled to a discount of  
14 40 percent; and

15 (4) for a taxable entity for which the total revenue  
16 from its entire business is equal to or greater than \$700,000 but  
17 less than \$900,000, the taxable entity is entitled to a discount of  
18 20 percent.

19 (b) The amounts under Subsection (a) are subject to  
20 adjustment as provided by Section 171.006.

21 SECTION 10. The heading to Section 171.006, Tax Code, as  
22 effective January 1, 2008, is amended to read as follows:

23 Sec. 171.006. ADJUSTMENT OF ELIGIBILITY FOR NO TAX DUE,  
24 DISCOUNTS, [EXEMPTION] AND COMPENSATION DEDUCTION.

25 SECTION 11. Section 171.006(b), Tax Code, as effective  
26 January 1, 2008, is amended to read as follows:

27 (b) Beginning in 2010 [~~2009~~], on January 1 of each

1 even-numbered [~~odd-numbered~~] year, the amounts prescribed by  
2 Sections 171.002(d)(2), 171.0021, and 171.1013(c) are increased or  
3 decreased by an amount equal to the amount prescribed by those  
4 sections on December 31 of the preceding year multiplied by the  
5 percentage increase or decrease during the preceding state fiscal  
6 biennium in the consumer price index and rounded to the nearest  
7 \$10,000.

8 SECTION 12. Section 171.101(d), Tax Code, as effective  
9 January 1, 2008, is amended to read as follows:

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

15 SECTION 13. Section 171.1011, Tax Code, as effective  
16 January 1, 2008, is amended by amending Subsections (b), (c), (d),  
17 (e), (g-3), (h), (n), and (o) and adding Subsections (g-4) and (t)  
18 to read as follows:

19 (b) In this section, a reference to an amount reportable as  
20 income [~~entered~~] on a line number on an Internal Revenue Service  
21 form is the amount entered to the extent the amount entered complies  
22 with federal income tax law and includes the corresponding amount  
23 entered on a variant of the form, or a subsequent form, with a  
24 different line number to the extent the amount entered complies  
25 with federal income tax law. [~~The comptroller shall adopt rules as~~  
26 ~~necessary to accomplish the legislative intent prescribed by this~~  
27 ~~subsection and Subsection (a).~~]

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

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

6 (A) adding:

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

9 (ii) the amounts reportable as income  
10 ~~[entered]~~ on lines 4 through 10, Internal Revenue Service Form  
11 1120; and

12 (iii) any total revenue reported by a lower  
13 tier entity as includable in the taxable entity's total revenue  
14 under Section 171.1015(b); and

15 (B) subtracting:

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

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

24 (iii) to the extent included in Subsection  
25 (c)(1)(A), net distributive income from a taxable entity  
26 ~~[partnerships and from trusts and limited liability companies]~~  
27 treated as a partnership or ~~[partnerships for federal income tax~~



1 ~~purposes and net distributive income from limited liability~~  
2 ~~companies and corporations treated~~] as an S corporation  
3 [~~corporations~~] for federal income tax purposes;

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

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

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

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

14 (A) adding:

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

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

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

23 (iv) the amounts reportable as income on  
24 line 17, Internal Revenue Service Form 8825;

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

1                   (vi) any total revenue reported by a lower  
2 tier entity as includable in the taxable entity's total revenue  
3 under Section 171.1015(b); and

4                   (B) subtracting:

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

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

13                   (iii) to the extent included in Subsection  
14 (c)(2)(A), net distributive income from a taxable entity  
15 ~~[partnerships and from trusts and limited liability companies]~~  
16 treated as a partnership or ~~[partnerships for federal income tax~~  
17 ~~purposes and net distributive income from limited liability~~  
18 ~~companies and corporations treated]~~ as an S corporation  
19 ~~[corporations]~~ for federal income tax purposes;

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

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

25                   (3) for a taxable entity other than a taxable entity  
26 treated for federal income tax purposes as a corporation or  
27 partnership, an amount determined in a manner substantially

1 equivalent to the amount for Subdivision (1) or (2) determined by  
2 rules that the comptroller shall adopt.

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

7 (e) A taxable entity that owns an interest in a passive  
8 entity [~~that is not included in a group report under Section~~  
9 ~~171.1014~~] shall exclude from [~~include in~~] the taxable entity's  
10 total revenue the taxable entity's share of the net income of the  
11 passive entity, but only to the extent the net income of the passive  
12 entity was [~~not~~] generated by the margin of any other taxable  
13 entity.

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

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

22 (A) damages due the claimant;

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

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

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

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

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

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

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

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

27 (1) to the extent included under Subsection (c)(1)(A),

1 (c)(2)(A), or (c)(3), the total amount of payments the health care  
2 provider received:

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

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

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

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

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

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

23 SECTION 14. Section 171.1011(1)(1), Tax Code, as effective  
24 January 1, 2008, is amended to read as follows:

25 (1) "Sales commission" means:

26 (A) any form of compensation paid to a person for  
27 engaging in an act for which a license is required by Chapter 1101,

1 Occupations Code; or ~~and~~

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

7 SECTION 15. Section 171.1012(a)(3)(A), Tax Code, as  
8 effective January 1, 2008, is amended to read as follows:

9 (A) "Tangible personal property" means:

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

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

23 (iii) a computer program, as defined by  
24 Section 151.0031.

25 SECTION 16. Section 171.1012, Tax Code, as effective  
26 January 1, 2008, is amended by amending Subsections (c), (g), (h),  
27 and (k) and adding Subsection (o) to read as follows:

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

3 (1) labor costs;

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

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

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

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

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

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

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

25 (9) costs attributable to research, experimental,  
26 engineering, and design activities directly related to the  
27 production of the goods, including all research or experimental

1 expenditures described by Section 174, Internal Revenue Code;

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

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

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

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

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



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

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

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

26 (o) If a taxable entity, including a taxable entity with  
27 respect to which cost of goods sold is determined pursuant to

1 Section 171.1014(e)(1), whose principal business activity is film  
2 or television production or broadcasting or the distribution of  
3 tangible personal property described by Subsection (a)(3)(A)(ii),  
4 or any combination of these activities, elects to subtract cost of  
5 goods sold, the cost of goods sold for the taxable entity shall be  
6 the costs described in this section in relation to the property and  
7 include depreciation, amortization, and other expenses directly  
8 related to the acquisition, production, or use of the property,  
9 including expenses for the right to broadcast or use the property.

10 SECTION 17. Section 171.1013, Tax Code, as effective  
11 January 1, 2008, is amended by amending Subsections (a), (b), and  
12 (c) and adding Subsection (b-1) to read as follows:

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

19 (1) net distributive income from a taxable entity  
20 treated as a partnership [~~partnerships and from trusts and limited~~  
21 ~~liability companies treated as partnerships~~] for federal income tax  
22 purposes, but only if the person receiving the distribution is a  
23 natural person;

24 (2) net distributive income from limited liability  
25 companies and corporations treated as S corporations for federal  
26 income tax purposes, but only if the person receiving the  
27 distribution is a natural person; [~~and~~]

1 (3) stock awards and stock options deducted for  
2 federal income tax purposes; and

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

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

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

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

21 (b-1) This subsection applies to a taxable entity that is a  
22 small employer, as that term is defined by Section 1501.002,  
23 Insurance Code, and that has not provided health care benefits to  
24 any of its employees in the calendar year preceding the beginning  
25 date of its reporting period. Subject to Section 171.1014, a  
26 taxable entity to which this subsection applies that elects to  
27 subtract compensation for the purpose of computing its taxable

1 margin under Section 171.101 may subtract health care benefits as  
2 provided under Subsection (b) and may also subtract:

3 (1) for the first 12-month period on which margin is  
4 based and in which the taxable entity provides health care benefits  
5 to all of its employees, an additional amount equal to 50 percent of  
6 the cost of health care benefits provided to its employees for that  
7 period; and

8 (2) for the second 12-month period on which margin is  
9 based and in which the taxable entity provides health care benefits  
10 to all of its employees, an additional amount equal to 25 percent of  
11 the cost of health care benefits provided to its employees for that  
12 period.

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

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

27 (b) The combined group is a single taxable entity for

1 purposes of the application of the tax imposed under this chapter,  
2 including Section 171.002(d).

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

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

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

15 (1) determining the compensation for each of its  
16 members as provided by Section 171.1013 as if each member were an  
17 individual taxable entity, subject to the limitation prescribed by  
18 Section 171.1013(c);

19 (2) adding the amounts of compensation determined  
20 under Subdivision (1) together; and

21 (3) subtracting from the amount determined under  
22 Subdivision (2) any compensation amounts paid from one member of  
23 the combined group to another member of the combined group, but only  
24 to the extent the corresponding item of total revenue was  
25 subtracted under Subsection (c)(3).

26 (h) Each taxable entity that is part of a combined group  
27 report shall, for purposes of determining margin and apportionment,

1 include its activities for the same period used by the combined  
2 group.

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

5 SECTION 19. Section 171.1015, Tax Code, as effective  
6 January 1, 2008, is amended to read as follows:

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

18 (b) In addition to the tax it is required to pay under this  
19 chapter on its own taxable margin, a taxable entity that is an upper  
20 [~~a lower~~] tier entity may include, for purposes of calculating its  
21 own taxable margin, the total revenue [~~pay the tax on the taxable~~  
22 ~~margin~~] of a lower tier entity [~~higher tier partnership~~] if the  
23 lower tier entity [~~higher tier partnership~~] submits a report to the  
24 comptroller showing the amount of total revenue [~~taxable margin~~]  
25 that each upper [~~lower~~] tier entity that owns it should include  
26 within the upper [~~lower~~] tier entity's own taxable margin  
27 calculation, according to the ownership [~~profits~~] interest of the

1 upper [~~lower~~] tier entity. [~~An upper tier partnership is not~~  
2 ~~required to pay tax under this chapter on any taxable margin~~  
3 ~~reported under this section.~~]

4 (c) This section does not apply to that percentage of the  
5 total revenue [~~taxable margin~~] attributable to an upper [~~a lower~~]  
6 tier entity by a lower tier entity [~~an upper tier partnership~~] if  
7 the upper [~~lower~~] tier entity is not subject to the tax under this  
8 chapter. In this case, the lower tier entity [~~higher tier~~  
9 ~~partnership~~] is liable for the tax on its taxable margin.

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

15 (e) The comptroller shall adopt rules to administer this  
16 section.

17 SECTION 20. Section 171.103, Tax Code, as effective January  
18 1, 2008, is amended by adding Subsection (c) to read as follows:

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

1 information by 25 percent or more.

2 SECTION 21. Section 171.1055(b), Tax Code, as effective  
3 January 1, 2008, is amended to read as follows:

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

19 SECTION 22. Section 171.106, Tax Code, as effective January  
20 1, 2008, is amended by adding Subsection (f) to read as follows:

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

25 SECTION 23. Section 171.111, Tax Code, as effective January  
26 1, 2008, is amended to read as follows:

27 Sec. 171.111. TEMPORARY CREDIT ON TAXABLE MARGIN. (a) On



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

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

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

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

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

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

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

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

23           (3) ~~[(4)]~~ multiplying the amount determined under  
24 Subdivision (2) ~~[(3)]~~ by 4.5 percent ~~[the tax rate prescribed by~~  
25 ~~Section 171.002(a)(2)].~~

26           (c) ~~[A taxable entity that notifies the comptroller of its~~  
27 ~~intent to preserve its right to take a credit allowed by this~~

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

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

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

26 (d-2) The amount of credit claimed, including any unused  
27 credit carried forward, may not exceed the amount of franchise tax

1 due for the report. Unused credits may not be carried forward to  
2 reports originally due on or after September 1, 2027.

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

4 SECTION 24. Section 171.1121(b), Tax Code, as effective  
5 January 1, 2008, is amended to read as follows:

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

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

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

19 SECTION 26. Section 171.201(a), Tax Code, as effective  
20 January 1, 2008, is amended to read as follows:

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

24 (1) financial information of the taxable entity  
25 necessary to compute the tax under this chapter [~~showing the~~  
26 ~~financial condition of the taxable entity on the day that is the~~  
27 ~~last day of a calendar month and that is nearest to the end of the~~

1 ~~taxable entity's first year of business~~];

2 (2) the name and address of:

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

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

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

10 (D) for a trust, each trustee;

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

13 (4) other information required by the comptroller.

14 SECTION 27. Sections 171.203(a), (b), (d), and (e), Tax  
15 Code, as effective January 1, 2008, are amended to read as follows:

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

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

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

27 (3) the name, title, and mailing address of each

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

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

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

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

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

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

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

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

1 comptroller shall maintain a record of statements filed under this  
2 subsection and shall make that information available on request  
3 using the same procedures the comptroller uses for other requests  
4 for public information.

5 SECTION 28. Section 171.204, Tax Code, as effective January  
6 1, 2008, is amended by adding Subsection (c) to read as follows:

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

10 SECTION 29. Subchapter E, Chapter 171, Tax Code, is amended  
11 by adding Section 171.2125 to read as follows:

12 Sec. 171.2125. CALCULATING COST OF GOODS OR COMPENSATION IN  
13 STAFF LEASING ARRANGEMENTS. In calculating cost of goods sold or  
14 compensation, a taxable entity that is a client company of a staff  
15 leasing services company shall rely on information provided by the  
16 staff leasing services company on a form promulgated by the  
17 comptroller or an invoice.

18 SECTION 30. Subchapter E, Chapter 171, Tax Code, is amended  
19 by adding Section 171.214 to read as follows:

20 Sec. 171.214. SMALL BUSINESS TAX ADVISORY COMMITTEE. (a)  
21 The Small Business Tax Advisory Committee will conduct an annual  
22 study of the effects of the tax levied under this chapter on small  
23 businesses in the state. The study must take into consideration:

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

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

27 (3) the number of businesses that ceased to operate

1 due to the franchise tax, if any;

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

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

7 (6) any other items presented by the comptroller.

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

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

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

14 (3) at least one certified public accountant; and

15 (4) at least three small business owners.

16 (c) The comptroller, by rule, shall establish procedures  
17 for the functions of the advisory committee, including a report to  
18 be issued to the speaker of the house of representatives, the  
19 lieutenant governor, and the governor not later than January 1,  
20 2009.

21 SECTION 31. Subchapter G, Chapter 171, Tax Code, is amended  
22 by adding Sections 171.3015 and 171.3125 to read as follows:

23 Sec. 171.3015. FORFEITURE OF CERTIFICATE OR REGISTRATION OF  
24 TAXABLE ENTITY. The comptroller may, for the same reasons and using  
25 the same procedures the comptroller uses in relation to the  
26 forfeiture of a corporation's charter or certificate of authority,  
27 forfeit the certificate or registration of a taxable entity.



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

7           (b) The secretary of state may adopt rules to implement this  
8 section.

9           SECTION 32. Section 171.309, Tax Code, is amended to read as  
10 follows:

11           Sec. 171.309. FORFEITURE BY SECRETARY OF STATE. The  
12 secretary of state may forfeit the charter, ~~[or]~~ certificate, or  
13 registration of a taxable entity ~~[of authority of a corporation]~~  
14 if:

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

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

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

23           SECTION 33. Subchapter H, Chapter 171, Tax Code, is amended  
24 by adding Section 171.356 to read as follows:

25           Sec. 171.356. BILLING OR INVOICING THE TAX AS A FEE, CHARGE,  
26 REIMBURSEMENT, OR OTHER ITEM. (a) A taxable entity may not include  
27 in a bill or invoice a fee, charge, reimbursement, or other item

1 that the taxable entity represents is for the purpose of full or  
2 partial payment or reimbursement of the tax under this chapter  
3 unless:

4 (1) the fee, charge, reimbursement, or other item  
5 directly corresponds to and may not exceed the amount of the tax the  
6 taxable entity paid under this chapter before the date the bill or  
7 invoice was issued or presented; and

8 (2) the taxable entity includes on the bill or invoice  
9 the following statement, prominently displayed in relation to the  
10 fee, charge, reimbursement, or other item: "Texas state law does  
11 not require (name of taxable entity) to collect this charge."

12 (b) A taxable entity that collects a fee, charge,  
13 reimbursement, or other item in a manner that violates Subsection  
14 (a):

15 (1) holds the entire amount collected in trust for the  
16 benefit of this state; and

17 (2) is liable to this state for the entire amount  
18 collected plus any accrued penalties and interest on the amount  
19 collected.

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

26 (d) This section does not apply to a bill or invoice under a  
27 contract for the lease of real property.

1           SECTION 34. Section 17, Chapter 1, Acts of the 79th  
2 Legislature, 3rd Called Session, 2006, is amended to read as  
3 follows:

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

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

16           SECTION 35. Sections 18(b) through (f), Chapter 1, Acts of  
17 the 79th Legislature, 3rd Called Session, 2006, are amended to read  
18 as follows:

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

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

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

6 (d) A corporation that has any unused credits established  
7 [~~accrued~~] before the effective date of this Act under Subchapter O,  
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 O, Chapter 171, Tax Code, had it continued  
15 in existence, or December 31, 2027, 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 (e) A corporation that has any unused credits established  
21 [~~accrued~~] before the effective date of this Act under Subchapter P,  
22 Chapter 171, Tax Code, may claim those unused credits on or with the  
23 tax report for the period in which the credit was established  
24 [~~accrued~~]. However, if the corporation was allowed to carry  
25 forward unused credits under that subchapter, the corporation may  
26 continue to apply those credits on or with each consecutive report  
27 until the earlier of the date the credit would have expired under

1 the terms of Subchapter P, Chapter 171, Tax Code, had it continued  
2 in existence, or December 31, 2012, and the former law under which  
3 the corporation established [~~accrued~~] the credits is continued in  
4 effect for purposes of determining the amount of the credits the  
5 corporation may claim and the manner in which the corporation may  
6 claim the credits.

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

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

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

27 (1) margin or gross receipts occurring before June 1,

1 2006, may not be considered for purposes of determining taxable  
2 margin or for apportionment purposes; and

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

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

9 (i) beginning on the later of:

10 (a) June 1, 2006; or

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

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

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

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

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

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

25 (i) beginning on the later of:

26 (a) January 1, 2007; or

27 (b) the date the entity was organized

1 in the state or, if a foreign entity, the date it began doing  
2 business in this state; and

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

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

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

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

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

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

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

18 (1) is not doing business in this state on January 1,  
19 2008;

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

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

26 (b-2) An entity to which Subsection (b-1) applies shall, for  
27 the privilege of doing business in this state at any time after June

1 30, 2007, and before January 1, 2008, file a final report and pay an  
2 additional tax equal to the appropriate rate under Section 171.002,  
3 Tax Code, as amended by this Act, of the entity's taxable margin  
4 based on the period:

5 (1) beginning on the later of:

6 (A) January 1, 2007; or

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

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

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

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

22 SECTION 37. Sections 23(b) and (f), Chapter 1, Acts of the  
23 79th Legislature, 3rd Called Session, 2006, are amended to read as  
24 follows:

25 (b) The information report required under this section must  
26 contain the same information that an entity required to file the  
27 report would have submitted in its report due to the comptroller in



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

8 (f) The comptroller:

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

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

14 (3) shall provide those forms and instructions to  
15 those entities on or after November 15, 2006, but before December 2,  
16 2006;

17 (4) shall require the entities to submit their  
18 information reports on or before February 15, 2007 [~~and February~~  
19 ~~15, 2008~~];

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

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

1 this section if the changes made by this Act to Chapter 171, Tax  
2 Code, had been in effect January 1, 2006, and the school maintenance  
3 and operations property taxes paid by the entities in the 2005 [  
4 ~~2006, and 2007~~] tax year [~~years~~].

5 SECTION 38. Subtitle F, Title 2, Tax Code, is amended by  
6 adding Chapter 172 to read as follows:

7 CHAPTER 172. FRANCHISE TAX

8 Sec. 172.001. DEFINITIONS; REFERENCES IN OTHER LAW. (a)

9 Unless otherwise provided by this chapter, the terms used in this  
10 chapter have the same meaning as the terms used in Chapter 171.

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

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

17 (b) The tax imposed under this chapter extends to the limits  
18 of the United States Constitution and the federal law adopted under  
19 the United States Constitution.

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

23 Sec. 172.003. AMOUNT OF TAX. The amount of the tax imposed  
24 by this chapter on a taxable entity is computed by:

25 (1) determining the taxable entity's total revenue  
26 from its entire business, as determined under Section 171.1011;

27 (2) apportioning the amount computed under

1 Subdivision (1) to this state, as provided by Section 171.106, to  
2 determine the taxable entity's apportioned total revenue; and  
3 (3) multiplying the amount computed under Subdivision  
4 (2) by the rate of 0.675 percent.

5 Sec. 172.004. PAYMENT. A taxable entity that pays the tax  
6 imposed by this chapter shall pay the tax to the comptroller in the  
7 same manner provided for the elective franchise tax under Chapter  
8 171.

9 Sec. 172.005. COLLECTION, ADMINISTRATION, AND ENFORCEMENT.  
10 The comptroller shall collect, administer, and enforce the tax  
11 under this chapter in the same manner as the comptroller collects,  
12 administers, and enforces the elective franchise tax under Chapter  
13 171.

14 SECTION 39. The following provisions of the Tax Code are  
15 repealed:

- 16 (1) Section 171.0011(e), as effective January 1, 2008;  
17 (2) Section 171.1011(p)(4-b), as effective January 1,  
18 2008;  
19 (3) Section 171.1014(g), as effective January 1, 2008;  
20 and  
21 (4) Section 171.2035, as effective January 1, 2008.

22 SECTION 40. This Act applies only to a report originally due  
23 on or after the effective date of this Act.

24 SECTION 41. Except as otherwise provided by this Act, this  
25 Act takes effect January 1, 2008.

# ADOPTED

MAY 18 2007

*Atty. General*  
Secretary of the Senate

BY: \_\_\_\_\_

FLOOR AMENDMENT NO. 1

1 Amend C.S.H.B. No. 3928 (Senate Committee Printing) as  
2 follows:

3 (1) Strike SECTION 1 of the bill (page 1, lines 12-14).

4 (2) Strike SECTION 6 of the bill (page 4, lines 36-54) and  
5 substitute the following:

6 SECTION 6. Section 171.001, Tax Code, as effective January  
7 1, 2008, is amended by adding Subsection (c) to read as follows:

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

12 (3) In SECTION 8 of the bill, strike Sections 171.002(a) and  
13 (b), Tax Code (page 4, line 69, through page 5, line 5), and  
14 substitute the following:

15 (a) Subject to Sections [~~Section~~] 171.003 and 171.1016 and  
16 except as provided by Subsection (b), the rate of the franchise tax  
17 is one percent [~~per year of privilege period~~] of taxable margin.

18 (b) Subject to Sections 171.003 and 171.1016, the [~~The~~] rate  
19 of the franchise tax is 0.5 percent [~~per year of privilege period~~]  
20 of taxable margin for those taxable entities primarily engaged in  
21 retail or wholesale trade.

22 (4) Insert an appropriately numbered SECTION to read as  
23 follows:

24 SECTION \_\_. Subchapter A, Chapter 171, Tax Code, is amended  
25 by adding Section 171.1016 to read as follows:

26 Sec. 171.1016. E-Z COMPUTATION AND RATE. (a)  
27 Notwithstanding any other provision of this chapter, a taxable  
28 entity whose total revenue from its entire business is not more than  
29 \$10 million may elect to pay the tax imposed under this chapter in

1 the amount computed and at the rate provided by this section rather  
2 than in the amount computed and at the tax rate provided by Section  
3 171.002.

4 (b) The amount of the tax for which a taxable entity that  
5 elects to pay the tax as provided by this section is liable is  
6 computed by:

7 (1) determining the taxable entity's total revenue  
8 from its entire business, as determined under Section 171.1011;

9 (2) apportioning the amount computed under  
10 Subdivision (1) to this state, as provided by Section 171.106, to  
11 determine the taxable entity's apportioned total revenue; and

12 (3) multiplying the amount computed under Subdivision  
13 (2) by the rate of 0.575 percent.

14 (c) A taxable entity that elects to pay the tax as provided  
15 by this section may not take a credit, deduction, or other  
16 adjustment that is not specifically authorized by this section.

17 (d) Section 171.0021 applies to a taxable entity that elects  
18 to pay the tax as provided by this section.

19 (e) A reference in this chapter or other law to the rate of  
20 the franchise tax means, as appropriate, the rate under Section  
21 171.002 or, for a taxable entity that elects to pay the tax as  
22 provided by this section, the rate under this section.

23 (5) Strike SECTION 20 of the bill (page 12, lines 25-36) and  
24 substitute the following:

25 SECTION 20. Section 171.103, Tax Code, as effective January  
26 1, 2008, is amended by adding Subsections (c) and (d) to read as  
27 follows:

28 (c) A taxable entity that is a combined group shall include  
29 in a report filed under Section 171.201 or 171.202, for each member  
30 of the combined group that does not have nexus with this state for  
31 the purpose of taxation:

1           (1) the gross receipts computed under Subsection (a);  
2 and

3           (2) the gross receipts computed under Subsection (a)  
4 that are subject to taxation in another state under a throwback law  
5 or regulation.

6           (d) The information required by Subsection (c) may be used  
7 for informational purposes only. A taxable entity with gross  
8 receipts from its entire business in the preceding taxable year of  
9 \$10 million or more forfeits the right to transact business in this  
10 state if the taxable entity fails to report or materially  
11 underreports the information required by Subsection (c).

12           (6) Strike SECTION 38 of the bill (page 19, line 43, through  
13 page 20, line 9).

14           (7) Insert an appropriately numbered SECTION to read as  
15 follows:

16           SECTION \_\_\_\_. The taxation method provided by Section 171.002,  
17 Tax Code, as amended by this Act, and the taxation method provided  
18 by Section 171.1016, Tax Code, as added by this Act, are not  
19 severable, and neither provision would have been enacted without  
20 the other. If the taxation method provided by Section 171.002, Tax  
21 Code, as amended by this Act, is held invalid, the taxation method  
22 provided by Section 171.1016, Tax Code, as added by this Act, is  
23 also invalid.

24           (8) Renumber the SECTIONS of the bill appropriately.

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# ADOPTED

MAY 18 2007

*Lotay Spaw*  
Secretary of the Senate  
BY: \_\_\_\_\_

*Thomas Brazier*

FLOOR AMENDMENT NO. 2

1 Amend C.S.H.B. No. 3928 (senate committee printing) in  
2 SECTION 30 of the bill by striking added Section 171.214, Tax Code  
3 (page 15, lines 37-64), and substituting the following:

4 SECTION \_\_. Subchapter E, Chapter 171, Tax Code, is amended  
5 by adding Section 171.214 to read as follows:

6 Sec. 171.214. BUSINESS TAX ADVISORY COMMITTEE. (a) The  
7 Business Tax Advisory Committee is created. The committee is  
8 composed of:

9 (1) two members of the house of representatives,  
10 appointed by the speaker of the house of representatives;

11 (2) two members of the senate, appointed by the  
12 lieutenant governor; and

13 (3) the following persons appointed by the  
14 comptroller:

15 (A) at least five residents of this state who are  
16 engaged in a private business, as either an employee or an owner,  
17 that is subject to taxation under this chapter; and

18 (B) at least two residents of this state with  
19 expertise in state business taxation.

20 (b) The comptroller shall determine the number of residents  
21 appointed under Subsection (a)(3).

22 (c) The comptroller is the presiding officer of the advisory  
23 committee.

24 (d) The advisory committee shall conduct a biennial study of  
25 the effects of the tax imposed under this chapter on businesses in  
26 this state. The study must take into consideration:

27 (1) the relative share of the tax paid by industry and  
28 by size of business;

29 (2) how the incidence of the tax compares with the

1 economic makeup of this state's business economy;

2 (3) how the tax compares in structure and in amounts  
3 paid to the business taxes imposed by other states;

4 (4) the effect of the tax on the economic climate of  
5 this state, including the effect on capital investment and job  
6 creation;

7 (5) any factors that result in the tax not operating as  
8 intended; and

9 (6) any other item presented by the comptroller or by a  
10 majority of the committee.

11 (e) The comptroller by rule shall establish procedures for  
12 the functions of the advisory committee, including procedures  
13 requiring the advisory committee to issue a report on its findings  
14 to the speaker of the house of representatives, the lieutenant  
15 governor, and the governor not later than the date each regular  
16 session of the legislature begins.

17 (f) This section expires January 31, 2013.

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FLOOR AMENDMENT NO. 1

BY: Ogden

1 Amend H.B. No. 3928 on third reading in added Subsection  
2 (d), Section 171.103, Tax Code, as added by Amendment No. 1 by  
3 Ogden on second reading (page 3, lines 7-11 of the amendment),  
4 by striking the last sentence of that subsection and  
5 substituting "The comptroller shall adopt rules as necessary to  
6 enforce the reporting requirement prescribed by Subsection (c)."

**ADOPTED**

MAY 18 2007

*Letay Spaw*  
Secretary of the Senate

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**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 14, 2007**

**TO:** Honorable Steve Ogden, Chair, Senate Committee on Finance

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3928** by Keffer, Jim (Relating to technical changes to the franchise tax.), **Committee Report 2nd House, Substituted**

<b>Estimated Two-year Net Impact to General Revenue Related Funds</b> for HB3928, Committee Report 2nd House, Substituted: an impact of \$0 through the biennium ending August 31, 2009.
--

**General Revenue-Related Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Revenue Gain/(Loss) from <i>Property Tax Relief Fund</i> 304</b>
2008	(\$2,967,000)
2009	\$4,145,000
2010	(\$4,416,000)
2011	\$7,183,000
2012	(\$2,360,000)

**Fiscal Analysis**

The bill would amend Chapter 171 and create Chapter 172 of the Tax Code relating to the franchise tax. The bill would rename Chapter 171 as "Elective Franchise Tax."

For Chapter 171, the bill would modify the calculation of tax for taxable entities with total revenue between \$300,000 and \$900,000 by applying a sliding discount scale ranging from 80 percent for taxable entities with total revenue less than \$400,000 to 20 percent for taxable entities with total revenue greater than \$700,000 but less than \$900,000. Under current law, taxable entities with total revenue of less than \$300,000 owe no tax.

The bill would provide an additional compensation deduction for a small employer, as defined in the Insurance Code, for initiating health care coverage for employees during the first and second year of provided coverage. For the first year the extra deduction is 50 percent of the employers cost and 25 percent for the second year.



The bill would shift forward by one year to 2010 the initial date to begin inflation-indexing the receipt levels for discount amounts and the compensation limit amount. The index would be updated in even-numbered years.

The bill would require taxable partnerships to include gross rental income instead of net rental income for determining total revenue.

The bill would provide that the gross proceeds from the sale of a loan or security treated as inventory of the seller for federal income tax purposes would be considered gross receipts for apportionment.

The bill would amend the temporary credit provisions to base the credit on business loss carryforwards that existed before January 1, 2008. The bill would specify the maximum amount of usable business loss carryforwards available in any year. The bill would make the maximum credit available to a taxable entity, the annual available business loss carryforwards multiplied by 4.5 percent. The credit amount would be limited to the liability of the taxable entity claiming the credit.

The bill would reduce the amount of control required for inclusion of a related entity in a combined group to "more than 50 percent," from 80 percent.

The bill would expand the definition of "client company" to include a client of a temporary employment service.

The bill would provide that "capital" gains from the sale of real property are included in the income that is subject to the 90 percent test for a passive entity.

The bill would create Chapter 172, which would be titled "Franchise Tax." The terms used in Chapter 172 would have the same meaning as in Chapter 171. Chapter 172 would impose a tax on each taxable entity doing business in the state. The amount of tax would be 0.675 percent of total revenue apportioned to Texas in the same manner as under Chapter 171. A taxable entity that elected to pay the franchise tax under Chapter 171 would have no liability under Chapter 172.

With one exception, this bill would take effect January 1, 2008. SECTION 36, which would clarify the reporting responsibility of a newly taxable entity, would take effect immediately upon enactment, assuming that the bill received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, SECTION 36 would take effect September 1, 2007.

### **Methodology**

The fiscal implications of applying discounts for taxpayers with total revenue between \$300,000 and \$900,000 for Chapter 171 was estimated using data from the Internal Revenue Service. A taxable entity with total revenue of \$900,000 or more would receive no discount. This calculation would not apply to Chapter 172. The fiscal implications of changing the first date for indexing the amounts and of the change in the ownership requirement for inclusion in a combined group were estimated using data from the Internal Revenue Service. The effect of including partnership gross rental income rather than net rental income for calculating total revenue was estimated using Internal Revenue Service data on partnerships. The effect of apportioning certain loans and securities based on gross proceeds was estimated using Comptroller franchise tax files. The effect of changing the calculation of the temporary credit provisions was estimated using Comptroller franchise tax files.

### **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JOB, SD, SM



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 8, 2007**

**TO:** Honorable Steve Ogden, Chair, Senate Committee on Finance

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3928** by Keffer, Jim (Relating to technical changes to the revised franchise tax.), **As Engrossed**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3928, As Engrossed: an impact of \$0 through the biennium ending August 31, 2009.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain/(Loss) from <i>Property Tax Relief Fund</i> 304
2008	(\$3,502,000)
2009	\$3,595,000
2010	(\$4,998,000)
2011	\$6,568,000
2012	(\$3,005,000)

**Fiscal Analysis**

The bill would amend Chapter 171 of the Tax Code relating to the franchise tax.

The bill would increase to \$600,000 the amount of total revenue a taxable entity could have and not owe tax. Under current law, the threshold will be \$300,000.

The bill would shift forward by one year to 2010 the initial date to begin inflation-indexing the receipts amount and the compensation limit amount. The index would be updated in even-numbered years.

The bill would require taxable partnerships to include gross rental income instead of net rental income for determining total revenue.

The bill would provide that the gross proceeds from the sale of a loan or security treated as inventory of the seller for federal income tax purposes would be considered gross receipts for apportionment.





The bill would amend the temporary credit provisions to base the credit on business loss carryforwards that existed before January 1, 2008. The bill would specify the maximum amount of usable business loss carryforwards available in any year. The bill would make the maximum credit available to a taxable entity the annual available business loss carryforwards multiplied by 4.5 percent. The credit amount would be limited to the liability of the taxable entity claiming the credit.

The bill would reduce the amount of control required for inclusion of a related entity in a combined group to "more than 50 percent," from 80 percent.

The bill would expand the definition of "client company" to include a client of a temporary employment service.

The bill would provide that a retail electric provider that does not provide and is not affiliated with an entity that provides transmission and distribution utility services is primarily engaged in retail or wholesale trade.

The bill would provide a tax credit for certain taxable entities making donations of art to qualified art museums in Texas.

With one exception, the bill would take effect January 1, 2008. SECTION 30, which would clarify the reporting responsibility of a newly taxable entity, would take effect immediately upon enactment, assuming that the bill received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, SECTION 30 would take effect September 1, 2007.

### **Methodology**

The fiscal implications of increasing the threshold amount for an entity owing margin tax to \$600,000 from \$300,000 and of changing the first date for indexing the amount were estimated using data from the Internal Revenue Service. The fiscal implication of the change in the ownership requirement for inclusion in a combined group and of designating certain retail electricity providers as being engaged in wholesale or retail trade were estimated using data from the Internal Revenue Service. The effect of including partnership gross rental income rather than net rental income for calculating total revenue was estimated using Internal Revenue Service data on partnerships. The effect of apportioning certain loans and securities based on gross proceeds was estimated using Comptroller franchise tax files. The effect of changing the calculation of the temporary credit provisions was estimated using Comptroller franchise tax files.

**Note:** The bill's net fiscal implication for the 2008-09 biennium would be revenue neutral.

### **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JOB, CT, SD, SM



**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

April 23, 2007

**TO:** Honorable Jim Keffer, Chair, House Committee on Ways & Means

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3928** by Keffer, Jim (Relating to technical changes to the revised franchise tax. ),  
**Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3928, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain/(Loss) from <i>Property Tax Relief Fund</i> 304
2008	(\$3,502,000)
2009	\$3,595,000
2010	(\$4,998,000)
2011	\$6,586,000
2012	(\$3,005,000)

**Fiscal Analysis**

The bill would amend Chapter 171 of the Tax Code, relating to the franchise tax.

The bill would make various technical corrections to the changes enacted in HB 3, 79th Legislature, Third Called Session (2006).

In addition, the bill would increase the threshold for an entity owing margin tax to \$600,000, from \$300,000.

The bill would amend the initial date for indexing the receipts amount and compensation amount for inflation to 2010 and require updates in even-numbered years.



The bill would require partnerships to include gross rental income instead of net rental income for determining total revenue.

The bill would provide that the gross proceeds from the sale of a loan or security treated as inventory of the seller for federal income tax purposes would be considered gross receipts for apportionment.

The bill would amend the temporary credit provisions by specifying that the credit is based on business loss carryforwards that existed before January 1, 2008.

The bill would specify the maximum amount of usable business loss carryforwards available in any year.

The bill would provide that the maximum credit available to a taxable entity would be the annual available business loss carryforward multiplied by 4.5 percent. The amount of credit would be limited to the liability of the taxable entity claiming the credit.

With one exception, the bill would take effect January 1, 2008.

SECTION 30, which would clarify the reporting responsibility of a newly taxable entity, would take effect immediately upon enactment, assuming that the bill received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, SECTION 30 would take effect September 1, 2007.

### **Methodology**

This fiscal note is based upon analyses provided by the Comptroller's Office.

The fiscal implications of increasing the threshold amount for an entity owing margin tax to \$600,000 from \$300,000 and of changing the first date for indexing the amount were estimated using data from the Internal Revenue Service. The effect of including partnership gross rental income rather than net rental income for calculating total revenue was estimated using Internal Revenue Service data on partnerships. The effect of apportioning certain loans and securities based on gross proceeds was estimated using Comptroller franchise tax files. The effect of changing the calculation of the temporary credit provisions was estimated using Comptroller franchise tax files.

### **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JOB, SD, CT



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**April 2, 2007**

**TO:** Honorable Jim Keffer, Chair, House Committee on Ways & Means

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3928** by Keffer, Jim (Relating to technical changes to the revised franchise tax.), **As Introduced**

**No fiscal implication to the State is anticipated.**

The bill would amend Chapter 171 of the Tax Code, relating to the franchise tax.

The bill would make various technical corrections to the language in HB 3, 79th Legislature, Third Called Session (2006). The technical corrections in the bill would clarify several aspects of the margin tax.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JOB, CT, SD, SM

