

By: Paxton

H.B. No. 1036

A BILL TO BE ENTITLED

AN ACT

relating to the method of computing the franchise tax and the rates of the tax.

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

SECTION 1. The heading of Subchapter A, Chapter 171, Tax Code, is amended to read as follows:

SUBCHAPTER A. [~~DEFINITIONS,~~] TAX IMPOSED

SECTION 2. Sections 171.001, 171.0011, and 171.002, Tax Code, are amended to read as follows:

Sec. 171.001. TAX IMPOSED. (a) A franchise tax is imposed on:

(1) each corporation [~~taxable entity~~] that does business in this state or that is chartered [~~or organized~~] in this state; and

(2) each limited liability company that does business in this state or that is organized under the laws of this state.

(b) In this chapter:

(1) "Banking corporation" means each state, national, domestic, or foreign bank, whether organized under the laws of this state, another state, or another country, or under federal law, including a limited banking association organized under Subtitle A, Title 3, Finance Code, and each bank organized under Section 25(a), Federal Reserve Act (12 U.S.C. Sections 611-631) (edge corporations), but does not include a bank holding company as that

1 term is defined by Section 2, Bank Holding Company Act of 1956 (12
2 U.S.C. Section 1841).

3 (2) "Beginning date" means:

4 (A) for a corporation chartered in this state,
5 the date on which the corporation's charter takes effect; and

6 (B) for a foreign corporation, the date on which
7 the corporation begins doing business in this state.

8 (3) "Corporation" includes:

9 (A) a limited liability company, as defined under
10 the Texas Limited Liability Company Act;

11 (B) a savings and loan association; and

12 (C) a banking corporation.

13 (4) "Charter" includes a limited liability company's
14 certificate of organization.

15 (5) "Internal Revenue Code" means the Internal Revenue
16 Code of 1986 in effect for the federal tax year beginning on or
17 after January 1, 1996, and before January 1, 1997, and any
18 regulations adopted under that code applicable to that period.

19 (6) "Officer" and "director" include a limited
20 liability company's directors and managers and a limited banking
21 association's directors and managers and participants if there are
22 no directors or managers.

23 (7) "Savings and loan association" means a savings and
24 loan association or savings bank, whether organized under the laws
25 of this state, another state, or another country, or under federal
26 law.

27 (8) "Shareholder" includes a limited liability

1 company's member and a limited banking association's participant.

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

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

9 Sec. 171.0011. ADDITIONAL TAX. (a) An ~~[Except as provided~~
10 ~~by Section 171.001(c), an]~~ additional tax is imposed on a
11 corporation ~~[taxable entity]~~ that for any reason becomes no longer
12 subject to the earned surplus component of the tax, without regard
13 to whether the corporation remains subject to the taxable capital
14 component of the tax ~~[imposed under this chapter].~~

15 (b) The additional tax is equal to 2.25 percent of the
16 corporation's net taxable earned surplus ~~[the appropriate rate~~
17 ~~under Section 171.002 of the taxable entity's taxable margin]~~
18 computed on the period beginning on the day after the last day for
19 which the tax imposed on ~~[taxable margin or]~~ net taxable earned
20 surplus was computed under Section 171.1532 and ending on the date
21 the corporation ~~[taxable entity]~~ is no longer subject to the earned
22 surplus component of the tax ~~[imposed under this chapter].~~

23 (c) The additional tax imposed and any report required by
24 the comptroller are due on the 60th day after the date the
25 corporation ~~[taxable entity]~~ becomes no longer subject to the
26 earned surplus component of the tax ~~[imposed under this chapter].~~

27 (d) Except as otherwise provided by this section, the

1 provisions of this chapter apply to the tax imposed under this
2 section.

3 Sec. 171.002. RATES; COMPUTATION OF TAX. (a) The rates
4 ~~[Subject to Sections 171.003 and 171.1016 and except as provided by~~
5 ~~Subsection (b), the rate]~~ of the franchise tax are:

6 (1) 0.125 ~~[is one]~~ percent per year of privilege
7 period of net taxable capital; and

8 (2) 2.25 percent of net taxable earned surplus
9 [margin].

10 (b) The amount of franchise tax on each corporation is
11 computed by adding the following:

12 (1) the amount calculated by applying the tax rate
13 prescribed by Subsection (a)(1) to the corporation's net taxable
14 capital; and

15 (2) the difference between:

16 (A) the amount calculated by applying the tax
17 rate prescribed by Subsection (a)(2) to the corporation's net
18 taxable earned surplus; and

19 (B) the amount determined under Subdivision (1)
20 ~~[Subject to Sections 171.003 and 171.1016, the rate of the~~
21 ~~franchise tax is 0.5 percent of taxable margin for those taxable~~
22 ~~entities primarily engaged in retail or wholesale trade].~~

23 (c) In making a computation under Subsection (b), an amount
24 computed under Subsection (b)(1) or (b)(2) that is zero or less is
25 computed as a zero ~~[A taxable entity is primarily engaged in retail~~
26 ~~or wholesale trade only if:~~

27 ~~[(1) the total revenue from its activities in retail~~

1 ~~or wholesale trade is greater than the total revenue from its~~
2 ~~activities in trades other than the retail and wholesale trades,~~

3 ~~[(2) except as provided by Subsection (c-1), less than~~
4 ~~50 percent of the total revenue from activities in retail or~~
5 ~~wholesale trade comes from the sale of products it produces or~~
6 ~~products produced by an entity that is part of an affiliated group~~
7 ~~to which the taxable entity also belongs; and~~

8 ~~[(3) the taxable entity does not provide retail or~~
9 ~~wholesale utilities, including telecommunications services,~~
10 ~~electricity, or gas].~~

11 ~~[(c-1) Subsection (c)(2) does not apply to total revenue~~
12 ~~from activities in a retail trade described by Major Group 58 of the~~
13 ~~Standard Industrial Classification Manual published by the federal~~
14 ~~Office of Management and Budget.]~~

15 (d) A corporation [~~taxable entity~~] is not required to pay
16 any tax and is not considered to owe any tax for a period if:

17 (1) the amount of tax computed for the corporation
18 [~~taxable entity~~] is less than \$100 [~~\$1,000~~]; or

19 (2) the amount of the corporation's gross receipts:

20 (A) [~~taxable entity's total revenue~~] from its
21 entire business under Section 171.105 is less than \$150,000; and

22 (B) from its entire business under Section
23 171.1051, including the amount excepted under Section 171.1051(a),
24 is less than \$150,000 [~~or equal to \$300,000 or the amount determined~~
25 ~~under Section 171.006 per 12-month period on which margin is~~
26 ~~based~~].

27 SECTION 3. Subchapter A, Chapter 171, Tax Code, is amended

1 by adding Section 171.005 to read as follows:

2 Sec. 171.005. RATE OF TAX FOR CORPORATION IN PROCESS OF
3 LIQUIDATION. The franchise tax rate on a corporation in the process
4 of liquidation, as defined by Section 171.102, is the rate
5 established by Section 171.002.

6 SECTION 4. Section 171.052, Tax Code, is amended to read as
7 follows:

8 Sec. 171.052. CERTAIN CORPORATIONS. (a) An [~~Except as~~
9 ~~provided by Subsection (c), an~~] insurance organization, title
10 insurance company, or title insurance agent authorized to engage in
11 insurance business in this state now required to pay an annual tax
12 under Chapter 4 or 9, Insurance Code, measured by its gross premium
13 receipts is exempted from the franchise tax. A nonadmitted
14 insurance organization that is required to pay a gross premium
15 receipts tax during a tax year is exempted from the franchise tax
16 for that same tax year.

17 (b) Farm mutuals, local mutual aid associations, and burial
18 associations are not subject to the franchise tax.

19 [~~(c) An entity is subject to the franchise tax for a tax year~~
20 ~~in any portion of which the entity is in violation of an order~~
21 ~~issued by the Texas Department of Insurance under Section~~
22 ~~2254.003(b), Insurance Code, that is final after appeal or that is~~
23 ~~no longer subject to appeal.~~]

24 SECTION 5. The heading of Subchapter C, Chapter 171, Tax
25 Code, is amended to read as follows:

1 SUBCHAPTER C. DETERMINATION OF TAXABLE CAPITAL AND TAXABLE EARNED
2 SURPLUS [~~MARGIN~~]; ALLOCATION AND APPORTIONMENT

3 SECTION 6. Section 171.101, Tax Code, is amended to read as
4 follows:

5 Sec. 171.101. DETERMINATION OF NET TAXABLE CAPITAL
6 [~~MARGIN~~]. (a) Except as provided by Subsections (b) and (c), the
7 net [~~The~~] taxable capital [~~margin~~] of a corporation [~~taxable~~
8 ~~entity~~] is computed by:

9 (1) adding the corporation's stated capital, as
10 defined by Section 21.002, Business Organizations Code, and the
11 corporation's surplus, to determine the corporation's taxable
12 capital [~~determining the taxable entity's margin, which is the~~
13 ~~lesser of:~~

14 [~~(A) 70 percent of the taxable entity's total~~
15 ~~revenue from its entire business, as determined under Section~~
16 ~~171.1011; or~~

17 [~~(B) an amount computed by:~~

18 [~~(i) determining the taxable entity's total~~
19 ~~revenue from its entire business, under Section 171.1011; and~~

20 [~~(ii) subtracting, at the election of the~~
21 ~~taxable entity, either:~~

22 [~~(a) cost of goods sold, as determined~~
23 ~~under Section 171.1012; or~~

24 [~~(b) compensation, as determined~~
25 ~~under Section 171.1013; and~~

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

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

7 (2) apportioning the corporation's taxable capital
8 ~~[taxable entity's margin]~~ to this state as provided by Section
9 171.106(a), (c), or (d), as applicable, [171.106] to determine the
10 corporation's [taxable entity's] apportioned taxable capital
11 ~~[margin]~~; and

12 (3) subtracting from the amount computed under
13 Subdivision (2) any other allowable deductions to determine the
14 corporation's net [taxable entity's] taxable capital [margin].

15 (b) The net taxable capital of a limited liability company
16 is computed by:

17 (1) adding the company's members' contributions, as
18 provided for under the Texas Limited Liability Company Act, and
19 surplus to determine the company's taxable capital;

20 (2) apportioning the amount determined under
21 Subdivision (1) to this state in the same manner that the taxable
22 capital of a corporation is apportioned to this state under Section
23 171.106(a), (c), or (d), as applicable, to determine the company's
24 apportioned taxable capital; and

25 (3) subtracting from the amount computed under
26 Subdivision (2) any other allowable deductions, to determine the
27 company's net taxable capital ~~[Notwithstanding Subsection~~

1 ~~(a)(1)(B)(ii), a staff leasing services company may subtract only~~
2 ~~compensation as determined under Section 171.1013].~~

3 (c) The net taxable capital of a savings and loan
4 association is computed by:

5 (1) determining the association's net worth; and

6 (2) apportioning the amount determined under
7 Subdivision (1) to this state in the same manner that the taxable
8 capital of a corporation is apportioned to this state under Section
9 171.106(a) to determine the association's net taxable capital [In
10 ~~making a computation under this section, an amount that is zero or~~
11 ~~less is computed as a zero].~~

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

17 SECTION 7. Subchapter C, Chapter 171, Tax Code, is amended
18 by adding Section 171.102 to read as follows:

19 Sec. 171.102. DETERMINATION OF TAXABLE CAPITAL OF
20 CORPORATION IN PROCESS OF LIQUIDATION. (a) "Corporation in the
21 process of liquidation" means a corporation that:

22 (1) adopts and pursues in good faith a plan to marshal
23 the assets of the corporation, to pay or settle with the
24 corporation's creditors and debtors, and to apportion the remaining
25 assets of the corporation among the corporation's stockholders;

26 (2) adopts the plan by a resolution approved by the
27 corporation's board of directors and ratified by a majority of the

1 stockholders of record; and

2 (3) conducts the liquidation in the manner provided by
3 the law of this state to dissolve a corporation.

4 (b) The taxable capital of a corporation in the process of
5 liquidation is the difference between the amount of the
6 corporation's stock issued and the amount of the liquidating
7 dividends paid on the stock.

8 (c) The president and the secretary of the corporation shall
9 file an affidavit with the comptroller containing information about
10 the amount of liquidating dividends paid and a statement that the
11 corporation is in the process of liquidation. The plan described by
12 Subsection (a) for the corporation's liquidation must be attached
13 to and be a part of the affidavit.

14 (d) This section applies only to the computation of a
15 corporation's taxable capital under Section 171.101.

16 SECTION 8. Subchapter C, Chapter 171, Tax Code, is amended
17 by amending Section 171.103 and adding Sections 171.1032 and
18 171.104 to read as follows:

19 Sec. 171.103. DETERMINATION OF GROSS RECEIPTS FROM BUSINESS
20 DONE IN THIS STATE FOR TAXABLE CAPITAL [~~MARGIN~~]. In [~~(a) Subject~~
21 ~~to Section 171.1055, in~~] apportioning taxable capital [~~margin~~], the
22 gross receipts of a corporation [~~taxable entity~~] from its business
23 done in this state is the sum of the corporation's [~~taxable~~
24 ~~entity's~~] receipts from:

25 (1) each sale of tangible personal property if the
26 property is delivered or shipped to a buyer in this state regardless
27 of the FOB point or another condition of the sale, and each sale of

1 tangible personal property shipped from this state to a purchaser
2 in another state in which the seller is not subject to taxation;

3 (2) each service performed in this state [~~, except that~~
4 ~~receipts derived from servicing loans secured by real property are~~
5 ~~in this state if the real property is located in this state]~~;

6 (3) each rental of property situated in this state;

7 (4) the use of a patent, copyright, trademark,
8 franchise, or license in this state;

9 (5) each sale of real property located in this state,
10 including royalties from oil, gas, or other mineral interests; and

11 (6) other business done in this state.

12 [~~(b) A combined group shall include in its gross receipts~~
13 ~~computed under Subsection (a) the gross receipts of each taxable~~
14 ~~entity that is a member of the combined group and that has a nexus~~
15 ~~with this state for the purpose of taxation.~~

16 [~~(c) A taxable entity that is a combined group shall include~~
17 ~~in a report filed under Section 171.201 or 171.202, for each member~~
18 ~~of the combined group that does not have nexus with this state for~~
19 ~~the purpose of taxation.~~

20 [~~(1) the gross receipts computed under Subsection (a),~~
21 ~~and~~

22 [~~(2) the gross receipts computed under Subsection (a)~~
23 ~~that are subject to taxation in another state under a throwback law~~
24 ~~or regulation.~~

25 [~~(d) The information required by Subsection (c) may be used~~
26 ~~for informational purposes only. The comptroller shall adopt~~
27 ~~rules as necessary to enforce the reporting requirement prescribed~~

1 ~~by Subsection (c).]~~

2 Sec. 171.1032. DETERMINATION OF GROSS RECEIPTS FROM
3 BUSINESS DONE IN THIS STATE FOR TAXABLE EARNED SURPLUS. (a) Except
4 for the gross receipts of a corporation that are subject to Section
5 171.1061, in apportioning taxable earned surplus, the gross
6 receipts of a corporation from its business done in this state is
7 the sum of the corporation's receipts from:

8 (1) each sale of tangible personal property if the
9 property is delivered or shipped to a buyer in this state regardless
10 of the FOB point or another condition of the sale, and each sale of
11 tangible personal property shipped from this state to a purchaser
12 in another state in which the seller is not subject to any tax on, or
13 measured by, net income, without regard to whether the tax is
14 imposed;

15 (2) each service performed in this state;

16 (3) each rental of property situated in this state;

17 (4) the use of a patent, copyright, trademark,
18 franchise, or license in this state;

19 (5) each sale of real property located in this state,
20 including royalties from oil, gas, or other mineral interests;

21 (6) each partnership or joint venture to the extent
22 provided by Subsection (c); and

23 (7) other business done in this state.

24 (b) A corporation shall deduct from its gross receipts
25 computed under Subsection (a) any amount to the extent included
26 under Subsection (a) because of the application of Section 78 or
27 Sections 951-964, Internal Revenue Code, any amount excludable

1 under Section 171.110(k), and dividends received from a subsidiary,
2 associate, or affiliated corporation that does not transact a
3 substantial portion of its business or regularly maintain a
4 substantial portion of its assets in the United States.

5 (c) A corporation shall include in its gross receipts
6 computed under Subsection (a) the corporation's share of the gross
7 receipts of each partnership and joint venture of which the
8 corporation is a part apportioned to this state as though the
9 corporation directly earned the receipts, including receipts from
10 business done with the corporation.

11 Sec. 171.104. GROSS RECEIPTS FROM BUSINESS DONE IN TEXAS:
12 DEDUCTION FOR FOOD AND MEDICINE RECEIPTS. A corporation may deduct
13 from its receipts includable under Section 171.103(1) the amount of
14 the corporation's receipts from sales of the following items, if
15 the items are shipped from outside this state and the receipts would
16 be includable under Section 171.103(1) in the absence of this
17 section:

18 (1) food that is exempted from the state sales and use
19 tax under Section 151.314; and

20 (2) health care supplies that are exempted from the
21 state sales and use tax under Section 151.313.

22 SECTION 9. Subchapter C, Chapter 171, Tax Code, is amended
23 by amending Section 171.105 and adding Section 171.1051 to read as
24 follows:

25 Sec. 171.105. DETERMINATION OF GROSS RECEIPTS FROM ENTIRE
26 BUSINESS FOR TAXABLE CAPITAL. (a) In apportioning taxable
27 capital, the gross receipts of a corporation from its entire

1 business is the sum of the corporation's receipts from:

2 (1) each sale of the corporation's tangible personal
3 property;

4 (2) each service, rental, or royalty; and

5 (3) other business.

6 (b) If a corporation sells an investment or capital asset,
7 the corporation's gross receipts from its entire business for
8 taxable capital include only the net gain from the sale.

9 Sec. 171.1051. DETERMINATION OF GROSS RECEIPTS FROM ENTIRE
10 BUSINESS FOR TAXABLE EARNED SURPLUS [MARGIN]. (a) Except for the
11 gross receipts of a corporation that are subject to Section
12 171.1061 [Subject to Section 171.1055], in apportioning taxable
13 earned surplus [margin], the gross receipts of a corporation
14 [taxable entity] from its entire business is the sum of the
15 corporation's [taxable entity's] receipts from:

16 (1) each sale of the corporation's [taxable entity's]
17 tangible personal property;

18 (2) each service, rental, or royalty; [and]

19 (3) each partnership and joint venture as provided by
20 Subsection (d); and

21 (4) other business.

22 (b) If a corporation [taxable entity] sells an investment or
23 capital asset, the corporation's [taxable entity's] gross receipts
24 from its entire business for taxable earned surplus [margin]
25 includes only the net gain from the sale.

26 (c) A corporation shall deduct from its gross receipts
27 computed under Subsection (a) any amount to the extent included in

1 Subsection (a) because of the application of Section 78 or Sections
2 951-964, Internal Revenue Code, any amount excludable under Section
3 171.110(k), and dividends received from a subsidiary, associate, or
4 affiliated corporation that does not transact a substantial portion
5 of its business or regularly maintain a substantial portion of its
6 assets in the United States.

7 (d) A corporation shall include in its gross receipts
8 computed under Subsection (a) the corporation's share of the gross
9 receipts of each partnership and joint venture of which the
10 corporation is a part [~~A combined group shall include in its gross~~
11 ~~receipts computed under Subsection (a) the gross receipts of each~~
12 ~~taxable entity that is a member of the combined group, without~~
13 ~~regard to whether that entity has a nexus with this state for the~~
14 ~~purpose of taxation].~~

15 SECTION 10. Subchapter C, Chapter 171, Tax Code, is amended
16 by amending Sections 171.106, 171.107, 171.108, and 171.1121, and
17 by adding Sections 171.1061, 171.109, 171.110, 171.112, and 171.113
18 to read as follows:

19 Sec. 171.106. APPORTIONMENT OF TAXABLE CAPITAL AND TAXABLE
20 EARNED SURPLUS [~~MARGIN~~] TO THIS STATE. (a) Except as provided by
21 Subsections (c) and (d), a corporation's taxable capital is
22 apportioned to this state to determine the amount of the tax imposed
23 under Section 171.002(b)(1) by multiplying the corporation's
24 taxable capital by a fraction, the numerator of which is the
25 corporation's gross receipts from business done in this state, as
26 determined under Section 171.103, and the denominator of which is
27 the corporation's gross receipts from its entire business, as

1 determined under Section 171.105.

2 **(b)** Except as provided by Subsections (c) and (d) [~~this~~
3 ~~section~~], a corporation's taxable earned surplus [~~taxable entity's~~
4 ~~margin~~] is apportioned to this state to determine the amount of tax
5 imposed under Section 171.002(b)(2) [~~171.002~~] by multiplying the
6 taxable earned surplus [~~margin~~] by a fraction, the numerator of
7 which is the corporation's [~~taxable entity's~~] gross receipts from
8 business done in this state, as determined under Section 171.1032
9 [~~171.103~~], and the denominator of which is the corporation's
10 [~~taxable entity's~~] gross receipts from its entire business, as
11 determined under Section 171.1051 [~~171.105~~].

12 **(c)** [~~(b)~~] A corporation's taxable capital or earned surplus
13 [~~taxable entity's margin~~] that is derived, directly or indirectly,
14 from the sale of management, distribution, or administration
15 services to or on behalf of a regulated investment company,
16 including a corporation [~~taxable entity~~] that includes trustees or
17 sponsors of employee benefit plans that have accounts in a
18 regulated investment company, is apportioned to this state to
19 determine the amount of the tax imposed under Section 171.002 by
20 multiplying the corporation's [~~taxable entity's~~] total taxable
21 capital or earned surplus [~~margin~~] from the sale of services to or
22 on behalf of a regulated investment company by a fraction, the
23 numerator of which is the average of the sum of shares owned at the
24 beginning of the year and the sum of shares owned at the end of the
25 year by the investment company shareholders who are commercially
26 domiciled in this state or, if the shareholders are individuals,
27 are residents of this state, and the denominator of which is the

1 average of the sum of shares owned at the beginning of the year and
2 the sum of shares owned at the end of the year by all investment
3 company shareholders. The corporation shall make a separate
4 computation to allocate taxable capital and earned surplus. In
5 this subsection, "regulated investment company" has the meaning
6 assigned by Section 851(a), Internal Revenue Code.

7 (d) [~~e~~] A corporation's taxable capital or taxable earned
8 surplus [~~taxable entity's margin~~] that is derived, directly or
9 indirectly, from the sale of management, administration, or
10 investment services to an employee retirement plan is apportioned
11 to this state to determine the amount of the tax imposed under
12 Section 171.002 by multiplying the corporation's [~~taxable entity's~~]
13 total taxable capital or earned surplus [~~margin~~] from the sale of
14 services to an employee retirement plan company by a fraction, the
15 numerator of which is the average of the sum of beneficiaries
16 domiciled in Texas at the beginning of the year and the sum of
17 beneficiaries domiciled in Texas at the end of the year, and the
18 denominator of which is the average of the sum of all beneficiaries
19 at the beginning of the year and the sum of all beneficiaries at the
20 end of the year. The corporation shall make a separate computation
21 to apportion taxable capital and earned surplus. In this section,
22 "employee retirement plan" means a plan or other arrangement that
23 is qualified under Section 401(a), Internal Revenue Code, or
24 satisfies the requirements of Section 403, Internal Revenue Code,
25 or a government plan described in Section 414(d), Internal Revenue
26 Code. The term does not include an individual retirement account or
27 individual retirement annuity within the meaning of Section 408,

1 Internal Revenue Code.

2 (e) [~~(d)~~] A banking corporation shall exclude from the
3 numerator of the bank's apportionment factor interest earned on
4 federal funds and interest earned on securities sold under an
5 agreement to repurchase that are held in this state in a
6 correspondent bank that is domiciled in this state. In this
7 subsection, "correspondent" has the meaning assigned by 12 C.F.R.
8 Section 206.2(c).

9 (f) [~~(e)~~] Receipts from services that a defense
10 readjustment project performs in a defense economic readjustment
11 zone are not receipts from business done in this state.

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

16 Sec. 171.1061. ALLOCATION OF CERTAIN TAXABLE EARNED SURPLUS
17 TO THIS STATE. An item of income included in a corporation's
18 taxable earned surplus, except that portion derived from dividends
19 and interest, that a state, other than this state, or a country,
20 other than the United States, cannot tax because the activities
21 generating that item of income do not have sufficient unitary
22 connection with the corporation's other activities conducted
23 within that state or country under the United States Constitution,
24 is allocated to this state if the corporation's commercial domicile
25 is in this state. Income that can only be allocated to the state of
26 commercial domicile because the income has insufficient unitary
27 connection with any other state or country shall be allocated to

1 this state or another state or country net of expenses related to
2 that income. A portion of a corporation's taxable earned surplus
3 allocated to this state under this section may not be apportioned
4 under Section 171.110(a)(2).

5 Sec. 171.107. DEDUCTION OF COST OF SOLAR ENERGY DEVICE FROM
6 TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS [~~MARGIN~~] APPORTIONED TO
7 THIS STATE. (a) In this section, "solar energy device" means a
8 system or series of mechanisms designed primarily to provide
9 heating or cooling or to produce electrical or mechanical power by
10 collecting and transferring solar-generated energy. The term
11 includes a mechanical or chemical device that has the ability to
12 store solar-generated energy for use in heating or cooling or in the
13 production of power.

14 (b) A corporation [~~taxable entity~~] may deduct from its
15 apportioned taxable capital the amortized cost of a solar energy
16 device or from its apportioned taxable earned surplus [~~margin~~] 10
17 percent of the amortized cost of a solar energy device if:

18 (1) the device is acquired by the corporation [~~taxable~~
19 ~~entity~~] for heating or cooling or for the production of power;

20 (2) the device is used in this state by the corporation
21 [~~taxable entity~~]; and

22 (3) the cost of the device is amortized in accordance
23 with Subsection (c).

24 (c) The amortization of the cost of a solar energy device
25 must:

26 (1) be for a period of at least 60 months;

27 (2) provide for equal monthly amounts [~~or conform to~~

1 ~~federal depreciation schedules~~];

2 (3) begin on the month in which the device is placed in
3 service in this state; and

4 (4) cover only a period in which the device is in use
5 in this state.

6 (d) A corporation [~~taxable entity~~] that makes a deduction
7 under this section shall file with the comptroller an amortization
8 schedule showing the period in which a deduction is to be made. On
9 the request of the comptroller, the corporation [~~taxable entity~~]
10 shall file with the comptroller proof of the cost of the solar
11 energy device or proof of the device's operation in this state.

12 (e) A corporation may elect to make the deduction authorized
13 by this section either from apportioned taxable capital or
14 apportioned taxable earned surplus for each separate regular annual
15 period. An election for an initial period applies to the second tax
16 period and to the first regular annual period.

17 Sec. 171.108. DEDUCTION OF COST OF CLEAN COAL PROJECT FROM
18 TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS [~~MARGIN~~] APPORTIONED TO
19 THIS STATE. (a) In this section, "clean coal project" has the
20 meaning assigned by Section 5.001, Water Code.

21 (b) A corporation [~~taxable entity~~] may deduct from its
22 apportioned taxable capital the amortized cost of equipment or from
23 its apportioned taxable earned surplus [~~margin~~] 10 percent of the
24 amortized cost of equipment:

25 (1) that is used in a clean coal project;

26 (2) that is acquired by the corporation [~~taxable~~
27 ~~entity~~] for use in generation of electricity, production of process

1 steam, or industrial production;

2 (3) that the corporation [~~taxable entity~~] uses in this
3 state; and

4 (4) the cost of which is amortized in accordance with
5 Subsection (c).

6 (c) The amortization of the cost of capital used in a clean
7 coal project must:

8 (1) be for a period of at least 60 months;

9 (2) provide for equal monthly amounts;

10 (3) begin in the month during which the equipment is
11 placed in service in this state; and

12 (4) cover only a period during which the equipment is
13 used in this state.

14 (d) A corporation [~~taxable entity~~] that makes a deduction
15 under this section shall file with the comptroller an amortization
16 schedule showing the period for which the deduction is to be made.
17 On the request of the comptroller, the corporation [~~taxable entity~~]
18 shall file with the comptroller proof of the cost of the equipment
19 or proof of the equipment's operation in this state.

20 (e) A corporation may elect to make the deduction authorized
21 by this section from apportioned taxable capital or apportioned
22 taxable earned surplus, but not from both, for each separate
23 regular annual period. An election for an initial period applies to
24 the second tax period and to the first regular annual period.

25 Sec. 171.109. SURPLUS. (a) In this chapter:

26 (1) "Surplus" means the net assets of a corporation
27 minus its stated capital. For a limited liability company,

1 "surplus" means the net assets of the company minus its members'
2 contributions. Surplus includes unrealized, estimated, or
3 contingent losses or obligations or any writedown of assets other
4 than those listed in Subsection (i) net of appropriate income tax
5 provisions. The definition under this subdivision does not apply
6 to earned surplus.

7 (2) "Net assets" means the total assets of a
8 corporation minus its total debts.

9 (3) "Debt" means any legally enforceable obligation
10 measured in a certain amount of money that must be performed or paid
11 within an ascertainable period or on demand.

12 (a-1) A legally enforceable obligation that requires the
13 return of a like-kind property that was borrowed will be considered
14 debt if it is a liability according to generally accepted
15 accounting principles and if the return must be made within an
16 ascertainable period or on demand. The amount that will be
17 considered debt is the fair market value measured on the last day on
18 which the report is based as required by Section 171.153. For
19 purposes of this subsection, "like-kind property" means the same
20 quantity, quality, and nature or character as the property
21 borrowed.

22 (b) Except as otherwise provided by this section, a
23 corporation must compute its surplus, assets, and debts according
24 to generally accepted accounting principles. If generally accepted
25 accounting principles are unsettled or do not specify an accounting
26 practice for a particular purpose related to the computation of
27 surplus, assets, or debts, the comptroller by rule may establish

1 rules to specify the applicable accounting practice for that
2 purpose.

3 (c) A corporation whose taxable capital is less than \$1
4 million may report its surplus according to the method used in the
5 corporation's most recent federal income tax return originally due
6 on or before the date on which the corporation's franchise tax
7 report is originally due. In determining if taxable capital is less
8 than \$1 million, the corporation shall apply the methods the
9 corporation used in computing that federal income tax return unless
10 another method is required under this chapter.

11 (d) A corporation shall report its surplus based solely on
12 its own financial condition. Consolidated reporting of surplus is
13 prohibited.

14 (e) Unless Section 171.111 applies due to election under
15 that section before that section's repeal, a corporation may not
16 change the accounting methods used to compute its surplus more
17 often than once every four years without the written consent of the
18 comptroller. A change in accounting methods is not justified
19 solely because it results in a reduction of tax liability.

20 (f) A corporation declaring dividends shall exclude those
21 dividends from its taxable capital, and a corporation receiving
22 dividends shall include those dividends in its gross receipts and
23 taxable capital as of the earlier of:

24 (1) the date the dividends are declared, if the
25 dividends are actually paid within one year after the declaration
26 date; or

27 (2) the date the dividends are actually paid.

1 (g) All oil and gas exploration and production activities
2 conducted by a corporation that reports its surplus according to
3 generally accepted accounting principles as required or permitted
4 by this chapter must be reported according to the successful
5 efforts or the full cost method of accounting.

6 (h) A parent or investor corporation must use the cost
7 method of accounting in reporting and calculating the franchise tax
8 on its investments in subsidiary corporations or other investees.
9 The retained earnings of a subsidiary corporation or other investee
10 before acquisition by the parent or investor corporation may not be
11 excluded from the cost of the subsidiary corporation or investee to
12 the parent or investor corporation and must be included by the
13 parent or investor corporation in calculating its surplus.

14 (i) The following accounts may also be excluded from
15 surplus, to the extent they are in conformance with generally
16 accepted accounting principles or the appropriate federal income
17 tax method, whichever is applicable:

18 (1) a reserve or allowance for uncollectable accounts;
19 and
20 (2) a contra-asset account for depletion,
21 depreciation, or amortization.

22 (j) A corporation may not exclude from surplus:

23 (1) liabilities for compensation and other benefits
24 provided to employees, other than wages, that are not debt as of the
25 end of the accounting period on which the taxable capital component
26 is based, including retirement, medical, insurance,
27 postretirement, and other similar benefits; and

1 (2) deferred investment tax credits.

2 (k) Notwithstanding any other provision in this chapter, a
3 corporation subject to the tax imposed by this chapter shall use
4 double entry bookkeeping to account for all transactions that
5 affect the computation of that tax.

6 (l) The "first in-first out" and "last in-first out" methods
7 of accounting are acceptable methods for computing surplus.

8 (m) A corporation may not use the push-down method of
9 accounting in computing or reporting its surplus.

10 (n) A corporation must use the equity method of accounting
11 when reporting an investment in a partnership or joint venture.

12 Sec. 171.110. DETERMINATION OF NET TAXABLE EARNED SURPLUS.

13 (a) The net taxable earned surplus of a corporation is computed by:

14 (1) determining the corporation's reportable federal
15 taxable income, subtracting from that amount any amount excludable
16 under Subsection (k), any amount included in reportable federal
17 taxable income under Section 78 or Sections 951-964, Internal
18 Revenue Code, and dividends received from a subsidiary, associate,
19 or affiliated corporation that does not transact a substantial
20 portion of its business or regularly maintain a substantial portion
21 of its assets in the United States, and adding to that amount any
22 compensation of officers or directors, or if a bank, any
23 compensation of directors and executive officers, to the extent
24 excluded in determining federal taxable income to determine the
25 corporation's taxable earned surplus;

26 (2) apportioning the corporation's taxable earned
27 surplus to this state as provided by Section 171.106(b), (c), or

1 (d), as applicable, to determine the corporation's apportioned
2 taxable earned surplus;

3 (3) adding the corporation's taxable earned surplus
4 allocated to this state as provided by Section 171.1061; and

5 (4) subtracting from that amount any allowable
6 deductions and any business loss that is carried forward to the tax
7 reporting period and deductible under Subsection (e).

8 (b) Except as provided by Subsection (c), a corporation is
9 not required to add the compensation of officers or directors as
10 required by Subsection (a)(1) if the corporation is:

11 (1) a corporation that has not more than 35
12 shareholders; or

13 (2) an S corporation, as that term is defined by
14 Section 1361, Internal Revenue Code.

15 (c) A subsidiary corporation may not claim the exclusion
16 under Subsection (b) if it has a parent corporation that does not
17 qualify for the exclusion. For purposes of this subsection, a
18 corporation qualifies as a parent if it ultimately controls the
19 subsidiary, even if the control arises through a series or group of
20 other subsidiaries or entities. Control is presumed if a parent
21 corporation directly or indirectly owns, controls, or holds a
22 majority of the outstanding voting stock of a corporation or
23 ownership interests in another entity.

24 (d) A corporation's reportable federal taxable income is
25 the corporation's federal taxable income after Schedule C special
26 deductions and before net operating loss deductions as computed
27 under the Internal Revenue Code, except that an S corporation's

1 reportable federal taxable income is the amount of the income
2 reportable to the Internal Revenue Service as taxable to the
3 corporation's shareholders.

4 (e) For purposes of this section, a business loss is any
5 negative amount after apportionment and allocation. The business
6 loss shall be carried forward to the year succeeding the loss year
7 as a deduction to net taxable earned surplus, then successively to
8 the succeeding four taxable years after the loss year or until the
9 loss is exhausted, whichever occurs first, but for not more than
10 five taxable years after the loss year. A business loss can be
11 carried forward only by the corporation that incurred the loss and
12 cannot be transferred to or claimed by any other entity, including
13 the survivor of a merger if the loss was incurred by the corporation
14 that did not survive the merger.

15 (f) A corporation may use either the "first in-first out" or
16 "last in-first out" method of accounting to compute its net taxable
17 earned surplus, but only to the extent that the corporation used
18 that method on its most recent federal income tax report originally
19 due on or before the date on which the corporation's franchise tax
20 report is originally due.

21 (g) For purposes of this section, an approved employee stock
22 ownership plan controlling a minority interest and voted through a
23 single trustee shall be considered one shareholder.

24 (h) A corporation shall report its net taxable earned
25 surplus based solely on its own financial condition. Consolidated
26 reporting is prohibited.

27 (i) For purposes of this section, any person designated as

1 an officer is presumed to be an officer if that person:

2 (1) holds an office created by the board of directors
3 or under the corporate charter or bylaws; and

4 (2) has legal authority to bind the corporation with
5 third parties by executing contracts or other legal documents.

6 (j) A corporation may rebut the presumption described in
7 Subsection (i) that a person is an officer if it conclusively shows,
8 through the person's job description or other documentation, that
9 the person does not participate or have authority to participate in
10 significant policymaking aspects of the corporate operations.

11 (k) Dividends and interest received from federal
12 obligations are not included in earned surplus or gross receipts
13 for earned surplus purposes.

14 (l) In this section:

15 (1) "Federal obligations" means:

16 (A) stocks and other direct obligations of, and
17 obligations unconditionally guaranteed by, the United States
18 government and United States government agencies; and

19 (B) direct obligations of a United States
20 government-sponsored agency.

21 (2) "Obligation" means any bond, debenture, security,
22 mortgage-backed security, pass-through certificate, or other
23 evidence of indebtedness of the issuing entity. The term does not
24 include a deposit, a repurchase agreement, a loan, a lease, a
25 participation in a loan or pool of loans, a loan collateralized by
26 an obligation of a United States government agency, or a loan
27 guaranteed by a United States government agency.

1 (3) "United States government" means any department or
2 ministry of the federal government, including a federal reserve
3 bank. The term does not include a state or local government, a
4 commercial enterprise owned wholly or partly by the United States
5 government, or a local governmental entity or commercial enterprise
6 whose obligations are guaranteed by the United States government.

7 (4) "United States government agency" means an
8 instrumentality of the United States government whose obligations
9 are fully and explicitly guaranteed as to the timely payment of
10 principal and interest by the full faith and credit of the United
11 States government. The term includes the Government National
12 Mortgage Association, the Department of Veterans Affairs, the
13 Federal Housing Administration, the Farmers Home Administration,
14 the Export-Import Bank of the United States, the Overseas Private
15 Investment Corporation, the Commodity Credit Corporation, the
16 Small Business Administration, and any successor agency.

17 (5) "United States government-sponsored agency" means
18 an agency originally established or chartered by the United States
19 government to serve public purposes specified by the United States
20 Congress but whose obligations are not explicitly guaranteed by the
21 full faith and credit of the United States government. The term
22 includes the Federal Home Loan Mortgage Corporation, the Federal
23 National Mortgage Association, the Farm Credit System, the Federal
24 Home Loan Bank System, the Student Loan Marketing Association, and
25 any successor agency.

26 Sec. 171.112. GROSS RECEIPTS FOR TAXABLE CAPITAL. (a) For
27 purposes of this section, "gross receipts" means all revenues that

1 would be recognized annually under a generally accepted accounting
2 principles method of accounting, without deduction for the cost of
3 property sold, materials used, labor performed, or other costs
4 incurred, unless otherwise specifically provided in this chapter.

5 (b) Except as otherwise provided by this section, a
6 corporation must compute gross receipts in accordance with
7 generally accepted accounting principles. If generally accepted
8 accounting principles are unsettled or do not specify an accounting
9 practice for a particular purpose related to the computation of
10 gross receipts, the comptroller by rule may establish rules to
11 specify the applicable accounting practice.

12 (c) A corporation whose taxable capital is less than \$1
13 million may report its gross receipts according to the method used
14 in the corporation's most recent federal income tax return
15 originally due on or before the date on which the corporation's
16 franchise tax report is originally due. In determining if taxable
17 capital is less than \$1 million, the corporation shall apply the
18 methods the corporation used in computing that federal income tax
19 return unless another method is required under this chapter.

20 (d) A corporation shall report its gross receipts based
21 solely on its own financial condition. Consolidated reporting is
22 prohibited.

23 (e) Unless Section 171.111 applies due to an election under
24 that section before that section's repeal, a corporation may not
25 change its accounting methods used to calculate gross receipts more
26 often than once every four years without the express written
27 consent of the comptroller. A change in accounting methods is not

1 justified solely because it results in a reduction of tax
2 liability.

3 (f) Notwithstanding any other provision in this chapter, a
4 corporation subject to the tax imposed by this chapter shall use
5 double entry bookkeeping to account for all transactions that
6 affect the computation of that tax.

7 (g) Chapter 141 does not apply to this chapter.

8 (h) Except as otherwise provided by this section, a
9 corporation shall use the same accounting methods to apportion its
10 taxable capital as it used to compute its taxable capital.

11 Sec. 171.1121. GROSS RECEIPTS FOR TAXABLE EARNED SURPLUS
12 [MARGIN]. (a) For purposes of this section, "gross receipts" means
13 all revenues reportable by a corporation [~~taxable entity~~] on its
14 federal tax return, without deduction for the cost of property
15 sold, materials used, labor performed, or other costs incurred,
16 unless otherwise specifically provided in this chapter. "Gross
17 receipts" does not include revenues that are not included in
18 taxable earned surplus. For example, Schedule C special deductions
19 and any amounts subtracted from reportable federal taxable income
20 under Section 171.110(a)(1) are not included in taxable earned
21 surplus and therefore are not considered gross receipts.

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

26 (c) A corporation shall report its gross receipts based
27 solely on its own financial condition. Consolidated reporting is

1 prohibited.

2 (d) Unless Section 171.111 applies due to an election under
3 that section before that section's repeal, a corporation [A taxable
4 entity] may not change its accounting methods used to calculate
5 gross receipts more often than once every four years without the
6 express written consent of the comptroller. A change in accounting
7 methods is not justified solely because it results in a reduction of
8 tax liability.

9 (e) A corporation's share of a partnership's gross receipts
10 that is included in the corporation's federal taxable income must
11 be used in computing the corporation's gross receipts under this
12 section. Unless otherwise provided by this chapter, a corporation
13 may not deduct costs incurred from the corporation's share of a
14 partnership's gross receipts. The gross receipts must be
15 apportioned as though the corporation directly earned them.

16 Sec. 171.113. ALTERNATE METHOD OF DETERMINING TAXABLE
17 CAPITAL AND GROSS RECEIPTS FOR CERTAIN CORPORATIONS. (a) This
18 section applies only to:

19 (1) a corporation organized as a close corporation
20 under Part 12, Texas Business Corporation Act, that has not more
21 than 35 shareholders;

22 (2) a foreign corporation organized under the close
23 corporation law of another state that has not more than 35
24 shareholders; and

25 (3) an S corporation as that term is defined by Section
26 1361, Internal Revenue Code.

27 (b) A corporation to which this section applies may elect to

1 compute its surplus, assets, debts, and gross receipts according to
2 the method the corporation uses to report its federal income tax
3 instead of as provided by Sections 171.109(b) and (g) and Section
4 171.112(b). This section does not affect the application of the
5 other subsections of Sections 171.109 and 171.112 and other
6 provisions of this chapter to a corporation making the election.

7 (c) The comptroller may adopt rules as necessary to specify
8 the reporting requirements for corporations to which this section
9 applies.

10 (d) This section does not apply to a subsidiary corporation
11 unless it applies to the parent corporation of the subsidiary.

12 (e) The election under Subsection (b) becomes effective
13 when written notice of the election is received by the comptroller
14 from the corporation. An election under Subsection (b) must be
15 postmarked not later than the due date for the electing
16 corporation's franchise tax report to which the election applies.

17 SECTION 11. Subchapter D, Chapter 171, Tax Code, is amended
18 to read as follows:

19 SUBCHAPTER D. PAYMENT OF TAX

20 Sec. 171.151. PRIVILEGE PERIOD COVERED BY TAX. The
21 franchise tax shall be paid for each of the following:

22 (1) an initial period beginning on the corporation's
23 [taxable entity's] beginning date and ending on the day before the
24 first anniversary of the beginning date;

25 (2) a second period beginning on the first anniversary
26 of the beginning date and ending on December 31 following that date;

27 and

1 (3) after the initial and second periods have expired,
2 a regular annual period beginning each year on January 1 and ending
3 the following December 31.

4 Sec. 171.152. DATE ON WHICH PAYMENT IS DUE. (a) Payment of
5 the tax covering the initial period is due within 90 days after the
6 date that the initial period ends or, if applicable, within 91 days
7 after the date of the merger.

8 (b) Payment of the tax covering the second period is due on
9 the same date as the tax covering the initial period.

10 (c) Payment of the tax covering the regular annual period is
11 due May 15, of each year after the beginning of the regular annual
12 period. However, if the first anniversary of the corporation's
13 ~~[taxable entity's]~~ beginning date is after October 3 and before
14 January 1, the payment of the tax covering the first regular annual
15 period is due on the same date as the tax covering the initial
16 period.

17 Sec. 171.153. BUSINESS ON WHICH TAX ON NET TAXABLE CAPITAL
18 IS BASED. (a) The tax covering the initial period is reported on
19 the initial report and is based on the business done by the
20 corporation during the period beginning on the corporation's
21 beginning date and:

22 (1) ending on the last accounting period ending date
23 that is at least six months after the beginning date and at least 60
24 days before the original due date of the initial report;

25 (2) if there is no such period ending date in
26 Subdivision (1), then ending on the day that is the last day of a
27 calendar month and that is nearest to the end of the corporation's

1 first year of business; or

2 (3) ending on the day after the merger occurs, for the
3 survivor of a merger that occurs after the ending date prescribed by
4 Subdivision (1) or (2), whichever is applicable, and before January
5 1, of the year an initial report is due by the survivor.

6 (b) The tax covering the second period is reported on the
7 initial report and is based on the same business on which the tax
8 covering the initial period is based and is to be prorated based on
9 the length of the second period.

10 (c) The tax covering the regular annual period is based on
11 the business done by the corporation during its last accounting
12 period that ends in the year before the year in which the tax is due.
13 If a corporation is the survivor of a merger that occurs between the
14 end of its last accounting period in the year before the report year
15 and January 1 of the report year, the tax will be based on the
16 financial condition of the surviving corporation for the 12-month
17 period ending on the day after the merger. However, if the first
18 anniversary of the corporation's beginning date is after October 3
19 and before January 1, the tax covering the first regular annual
20 period is based on the same business on which the tax covering the
21 initial period is based and is reported on the initial report.

22 Sec. 171.1531. CREDIT FOR SURVIVOR OF MERGER. (a) "Credit
23 period" means the period from the date of the merger or the date the
24 survivor was required to pay franchise tax, whichever is later,
25 through the end of the privilege period for which tax was actually
26 paid by the nonsurvivors.

27 (b) The survivor of a merger is entitled to a credit against

1 the tax computed on its net taxable capital under Section
2 171.002(b)(1) in the amount of the franchise tax computed on net
3 taxable capital paid by the nonsurvivors for the credit period,
4 provided the tax computed on net taxable capital paid by the
5 survivor for the credit period is based on the survivor's financial
6 condition after the merger. Only a survivor that is subject to the
7 franchise tax is entitled to the merger credit. The merger credit
8 shall be allocated among survivors based on net taxable capital
9 reported, and as provided by Section 171.153.

10 (c) The credit will be limited to the lesser of the amount of
11 tax on net taxable capital paid for the credit period by the
12 survivor or by the nonsurvivors.

13 Sec. 171.1532. BUSINESS ON WHICH TAX ON NET TAXABLE EARNED
14 SURPLUS [~~MARGIN~~] IS BASED. (a) The tax covering the privilege
15 periods included on the initial report, as required by Section
16 171.153, is based on the business done by the corporation [~~taxable~~
17 ~~entity~~] during the period beginning on the corporation's [~~taxable~~
18 ~~entity's~~] beginning date and:

19 (1) ending on the last accounting period ending date
20 that is at least 60 days before the original due date of the initial
21 report; or

22 (2) if there is no such period ending date in
23 Subdivision (1), then ending on the day that is the last day of a
24 calendar month and that is nearest to the end of the corporation's
25 [~~taxable entity's~~] first year of business.

26 (b) The tax covering the regular annual period, other than a
27 regular annual period included on the initial report, is based on

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

7 Sec. 171.154. PAYMENT TO COMPTROLLER. A corporation
8 [~~taxable entity~~] on which a tax is imposed by this chapter shall pay
9 the tax to the comptroller.

10 Sec. 171.158. PAYMENT BY FOREIGN CORPORATION [~~TAXABLE~~
11 ~~ENTITY~~] BEFORE WITHDRAWAL FROM STATE. (a) Except as provided by
12 Subsection (b), a foreign corporation [~~taxable entity~~] holding a
13 [~~registration or~~] certificate of authority to do business in this
14 state may withdraw from doing business in this state by filing a
15 certificate of withdrawal with the secretary of state. The
16 secretary of state shall file the certificate of withdrawal as
17 provided by law.

18 (b) The foreign corporation [~~taxable entity~~] may not
19 withdraw from doing business in this state unless it has paid,
20 before filing the certificate of withdrawal, any tax or penalty
21 imposed by this chapter on the corporation [~~taxable entity~~].

22 SECTION 12. Sections 171.201, 171.202, 171.2022, 171.203,
23 171.204, 171.205, 171.206, 171.207, 171.208, 171.209, 171.211, and
24 171.212, Tax Code, are amended to read as follows:

25 Sec. 171.201. INITIAL REPORT. (a) Except as provided by
26 Section 171.2022, a corporation [~~taxable entity~~] on which the
27 franchise tax is imposed shall file an initial report with the

1 comptroller containing:

2 (1) [~~financial~~] information showing the financial
3 condition of the corporation on the day that is the last day of a
4 calendar month and that is nearest to the end of the corporation's
5 first year of business [~~of the taxable entity necessary to compute~~
6 ~~the tax under this chapter~~];

7 (2) the name and address of [~~+~~
8 [~~(A)~~] each officer [~~,~~] and director [~~,~~ ~~and~~
9 ~~manager~~] of the corporation [~~taxable entity~~;

10 [~~(B)~~ for a limited partnership, each general
11 ~~partner~~;

12 [~~(C)~~ for a general partnership or limited
13 ~~liability partnership, each managing partner or, if there is not a~~
14 ~~managing partner, each partner; or~~

15 [~~(D)~~ for a trust, each trustee];

16 (3) the name and address of the agent of the
17 corporation [~~taxable entity~~] designated under Section 171.354; and

18 (4) other information required by the comptroller.

19 (b) The corporation [~~taxable entity~~] shall file the report
20 on or before the date the payment is due under Section 171.152(a).

21 Sec. 171.202. ANNUAL REPORT. (a) Except as provided by
22 Section 171.2022, a corporation [~~taxable entity~~] on which the
23 franchise tax is imposed shall file an annual report with the
24 comptroller containing:

25 (1) financial information of the corporation [~~taxable~~
26 ~~entity~~] necessary to compute the tax under this chapter;

27 (2) the name and address of each officer and director

1 of the corporation [~~taxable entity~~];

2 (3) the name and address of the agent of the
3 corporation [~~taxable entity~~] designated under Section 171.354; and

4 (4) other information required by the comptroller.

5 (b) The corporation [~~taxable entity~~] shall file the report
6 before May 16 of each year after the beginning of the regular annual
7 period. The report shall be filed on forms supplied by the
8 comptroller.

9 (c) The comptroller shall grant an extension of time to a
10 corporation [~~taxable entity~~] that is not required by rule to make
11 its tax payments by electronic funds transfer for the filing of a
12 report required by this section to any date on or before the next
13 November 15, if a corporation [~~taxable entity~~]:

14 (1) requests the extension, on or before May 15, on a
15 form provided by the comptroller; and

16 (2) remits with the request:

17 (A) not less than 90 percent of the amount of tax
18 reported as due on the report filed on or before November 15; or

19 (B) 100 percent of the tax reported as due for the
20 previous calendar year on the report due in the previous calendar
21 year and filed on or before May 14.

22 (d) In the case of a taxpayer whose previous return was its
23 initial report, the optional payment provided under Subsection
24 (c)(2)(B) or (e)(2)(B) must be equal to the greater of:

25 (1) an amount produced by multiplying the net taxable
26 capital [~~margin~~], as reported on the initial report filed on or
27 before May 14, by the rate of tax in Section 171.002(a)(1) [~~171.002~~]

1 that is effective January 1 of the year in which the report is due;
2 or

3 (2) an amount produced by multiplying the net taxable
4 earned surplus, as reported on the initial report filed on or before
5 May 14, by the rate of tax in Section 171.002(a)(2) that is
6 effective January 1 of the year in which the report is due.

7 (e) The comptroller shall grant an extension of time for the
8 filing of a report required by this section by a corporation
9 [~~taxable entity~~] required by rule to make its tax payments by
10 electronic funds transfer to any date on or before the next August
11 15, if the corporation [~~taxable entity~~]:

12 (1) requests the extension, on or before May 15, on a
13 form provided by the comptroller; and

14 (2) remits with the request:

15 (A) not less than 90 percent of the amount of tax
16 reported as due on the report filed on or before August 15; or

17 (B) 100 percent of the tax reported as due for the
18 previous calendar year on the report due in the previous calendar
19 year and filed on or before May 14.

20 (f) The comptroller shall grant an extension of time to a
21 corporation [~~taxable entity~~] required by rule to make its tax
22 payments by electronic funds transfer for the filing of a report due
23 on or before August 15 to any date on or before the next November 15,
24 if the corporation [~~taxable entity~~]:

25 (1) requests the extension, on or before August 15, on
26 a form provided by the comptroller; and

27 (2) remits with the request the difference between the

1 amount remitted under Subsection (e) and 100 percent of the amount
2 of tax reported as due on the report filed on or before November 15.

3 (h) If the sum of the amounts paid under Subsections (e)(2)
4 and (f)(2) is at least 99 percent of the amount reported as due on
5 the report filed on or before November 15, penalties for
6 underpayment with respect to the amount paid under Subsection
7 (f)(2) are waived.

8 (i) If a corporation [~~taxable entity~~] requesting an
9 extension under Subsection (c) or (e) does not file the report due
10 in the previous calendar year on or before May 14, the corporation
11 [~~taxable entity~~] may not receive an extension under Subsection (c)
12 or (e) unless the corporation [~~taxable entity~~] complies with
13 Subsection (c)(2)(A) or (e)(2)(A), as appropriate.

14 Sec. 171.2022. EXEMPTION FROM REPORTING REQUIREMENTS. A
15 corporation [~~taxable entity~~] that does not owe any tax under this
16 chapter for any period is not required to file a report under
17 Section 171.201 or 171.202. The exemption applies only to a period
18 for which no tax is due.

19 Sec. 171.203. PUBLIC INFORMATION REPORT. (a) A
20 corporation [~~or limited liability company~~] on which the franchise
21 tax is imposed, regardless of whether the corporation [~~or limited~~
22 ~~liability company~~] is required to pay any tax, shall file a report
23 with the comptroller containing:

24 (1) the name of each corporation [~~or limited liability~~
25 ~~company~~] in which the corporation [~~or limited liability company~~]
26 filing the report owns a 10 percent or greater interest and the
27 percentage owned by the corporation [~~or limited liability company~~];

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

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

9 (4) the name and address of the agent of the
10 corporation [~~or limited liability company~~] designated under
11 Section 171.354; and

12 (5) the address of the corporation's [~~or limited~~
13 ~~liability company's~~] principal office and principal place of
14 business.

15 (b) The corporation [~~or limited liability company~~] shall
16 file the report once a year on a form prescribed by the comptroller.

17 (c) The comptroller shall forward the report to the
18 secretary of state.

19 (d) The corporation [~~or limited liability company~~] shall
20 send a copy of the report to each person named in the report under
21 Subsection (a)(3) who is not currently employed by the corporation
22 [~~or limited liability company~~] or a related corporation [~~or limited~~
23 ~~liability company~~] listed in Subsection (a)(1) or (2). An officer
24 or director of the corporation [~~or limited liability company~~] or
25 another authorized person must sign the report under a
26 certification that:

27 (1) all information contained in the report is true

1 and correct to the best of the person's knowledge; and

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

4 (e) If a person's name is included in a report under
5 Subsection (a)(3) and the person is not an officer or director of
6 the corporation [~~or limited liability company~~] on the date the
7 report is filed, the person may file with the comptroller a sworn
8 statement disclaiming the person's status as shown on the report.
9 The comptroller shall maintain a record of statements filed under
10 this subsection and shall make that information available on
11 request using the same procedures the comptroller uses for other
12 requests for public information.

13 (f) A public information report that is filed
14 electronically complies with the signature and certification
15 requirements prescribed by Subsection (d).

16 Sec. 171.204. INFORMATION REPORT. (a) Except as provided
17 by Subsection (b), to determine eligibility for the exemption
18 provided by Section 171.2022, or to determine the amount of the
19 franchise tax or the correctness of a franchise tax report, the
20 comptroller may require an officer of a corporation [~~taxable~~
21 ~~entity~~] that may be subject to the tax imposed under this chapter to
22 file an information report with the comptroller stating the amount
23 of the corporation's taxable capital and earned surplus [~~taxable~~
24 ~~entity's margin~~], or any other information the comptroller may
25 request [~~that is necessary to make a determination under this~~
26 ~~subsection~~].

27 (b) The comptroller may require an officer of a corporation

1 ~~[taxable entity]~~ that does not owe any tax because of the
 2 application of Section 171.002(d)(2) to file an abbreviated
 3 information report with the comptroller stating the amount of the
 4 corporation's gross receipts ~~[taxable entity's total revenue]~~ from
 5 its entire business. The comptroller may not require a corporation
 6 ~~[taxable entity]~~ described by this subsection to file an
 7 information report that requires the corporation ~~[taxable entity]~~
 8 to report or compute its earned surplus or taxable capital ~~[margin-~~

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

12 Sec. 171.205. ADDITIONAL INFORMATION REQUIRED BY
 13 COMPTROLLER. The comptroller may require a corporation ~~[taxable~~
 14 ~~entity]~~ on which the franchise tax is imposed to furnish to the
 15 comptroller information from the corporation's ~~[taxable entity's]~~
 16 books and records that has not been filed previously and that is
 17 necessary for the comptroller to determine the amount of the tax.

18 Sec. 171.206. CONFIDENTIAL INFORMATION. Except as provided
 19 by Section 171.207, the following information is confidential and
 20 may not be made open to public inspection:

21 (1) information that is obtained from a record or
 22 other instrument that is required by this chapter to be filed with
 23 the comptroller; or

24 (2) information, including information about the
 25 business affairs, operations, profits, losses, ~~[cost of goods sold,~~
 26 ~~compensation,~~] or expenditures of a corporation ~~[taxable entity]~~,
 27 obtained by an examination of the books and records, officers,

1 [~~partners, trustees, agents,~~] or employees of a corporation
2 [~~taxable entity~~] on which a tax is imposed by this chapter.

3 Sec. 171.207. INFORMATION NOT CONFIDENTIAL. The following
4 information is not confidential and shall be made open to public
5 inspection:

6 (1) information contained in a document filed under
7 this chapter with a county clerk as notice of a tax lien; and

8 (2) information contained in a report required by
9 Section 171.203 [~~or 171.2035~~].

10 Sec. 171.208. PROHIBITION OF DISCLOSURE OF INFORMATION. A
11 person, including a state officer or employee or a shareholder [~~an~~
12 ~~owner~~] of a corporation [~~taxable entity~~], who has access to a report
13 filed under this chapter may not make known in a manner not
14 permitted by law the amount or source of the corporation's [~~taxable~~
15 ~~entity's~~] income, profits, losses, expenditures, [~~cost of goods~~
16 ~~sold, compensation,~~] or other information in the report relating to
17 the financial condition of the corporation [~~taxable entity~~].

18 Sec. 171.209. RIGHT OF SHAREHOLDER [~~OWNER~~] TO EXAMINE OR
19 RECEIVE REPORTS. If a person owning at least one share of
20 outstanding stock [~~an owner~~] of a corporation [~~taxable entity~~] on
21 whom the franchise tax is imposed presents evidence of the
22 ownership to the comptroller, the person is entitled to examine or
23 receive a copy of an initial or annual report that is filed under
24 Section 171.201 or 171.202 and that relates to the corporation
25 [~~taxable entity~~].

26 Sec. 171.211. EXAMINATION OF CORPORATE RECORDS. To
27 determine the franchise tax liability of a corporation [~~taxable~~

1 ~~entity~~], the comptroller may investigate or examine the records of
2 the corporation [~~taxable entity~~].

3 Sec. 171.212. REPORT OF CHANGES TO FEDERAL INCOME TAX
4 RETURN. (a) A corporation [~~taxable entity~~] must file an amended
5 report under this chapter if:

6 (1) the corporation's net [~~taxable entity's~~] taxable
7 earned surplus [~~margin~~] is changed as the result of an audit or
8 other adjustment by the Internal Revenue Service or another
9 competent authority; or

10 (2) the corporation [~~taxable entity~~] files an amended
11 federal income tax return or other return that changes the
12 corporation's net [~~taxable entity's~~] taxable earned surplus
13 [~~margin~~].

14 (b) The corporation [~~taxable entity~~] shall file the amended
15 report under Subsection (a)(1) not later than the 120th day after
16 the date the revenue agent's report or other adjustment is final.
17 For purposes of this subsection, a revenue agent's report or other
18 adjustment is final on the date on which all administrative appeals
19 with the Internal Revenue Service or other competent authority have
20 been exhausted or waived.

21 (c) The corporation [~~taxable entity~~] shall file the amended
22 report under Subsection (a)(2) not later than the 120th day after
23 the date the corporation [~~taxable entity~~] files the amended federal
24 income tax return or other return. For purposes of this subsection,
25 a corporation [~~taxable entity~~] is considered to have filed an
26 amended federal income tax return if the corporation [~~taxable~~
27 ~~entity~~] is a member of an affiliated group during a period in which

1 an amended consolidated federal income tax report is filed.

2 (d) If a corporation [~~taxable entity~~] fails to comply with
3 this section, the corporation [~~taxable entity~~] is liable for a
4 penalty of 10 percent of the tax that should have been reported
5 under this section and that had not previously been reported to the
6 comptroller. The penalty prescribed by this subsection is in
7 addition to any other penalty provided by law.

8 SECTION 13. Section 171.309, Tax Code, is amended to read as
9 follows:

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

13 (1) the secretary receives the comptroller's
14 certification under Section 171.302; [~~and~~]

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

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

21 SECTION 14. The heading to Subchapter F, Chapter 171, Tax
22 Code, is amended to read as follows:

23 SUBCHAPTER F. FORFEITURE OF CORPORATE [~~AND BUSINESS~~] PRIVILEGES

24 SECTION 15. Sections 171.351, 171.353, and 171.354, Tax
25 Code, are amended to read as follows:

26 Sec. 171.351. VENUE OF SUIT TO ENFORCE CHAPTER. Venue of a
27 civil suit against a corporation [~~taxable entity~~] to enforce this

1 chapter is either in a county where the corporation's [~~taxable~~
2 ~~entity's~~] principal office is located according to its charter or
3 certificate of authority or in Travis County.

4 Sec. 171.353. APPOINTMENT OF RECEIVER. If a court forfeits
5 a corporation's [~~taxable entity's~~] charter or certificate of
6 authority, the court may appoint a receiver for the corporation
7 [~~taxable entity~~] and may administer the receivership under the laws
8 relating to receiverships.

9 Sec. 171.354. AGENT FOR SERVICE OF PROCESS. Each
10 corporation [~~taxable entity~~] on which a tax is imposed by this
11 chapter shall designate a resident of this state as the
12 corporation's [~~taxable entity's~~] agent for the service of process.

13 SECTION 16. Sections 171.362(a), (d), and (e), Tax Code,
14 are amended to read as follows:

15 (a) If a corporation [~~taxable entity~~] on which a tax is
16 imposed by this chapter fails to pay the tax when it is due and
17 payable or fails to file a report required by this chapter when it
18 is due, the corporation [~~taxable entity~~] is liable for a penalty of
19 five percent of the amount of the tax due.

20 (d) If a corporation [~~taxable entity~~] electing to remit
21 under Section 171.202(c)(2)(A) remits less than the amount
22 required, the penalties imposed by this section and the interest
23 imposed under Section 111.060 are assessed against the difference
24 between the amount required to be remitted under Section
25 171.202(c)(2)(A) and the amount actually remitted on or before May
26 15.

27 (e) If a corporation [~~taxable entity~~] remits the entire

1 amount required by Section 171.202(c), no penalties will be imposed
2 against the amount remitted on or before November 15.

3 SECTION 17. Sections 171.363(a) and (b), Tax Code, are
4 amended to read as follows:

5 (a) A corporation [~~taxable entity~~] commits an offense if the
6 corporation [~~taxable entity~~] is subject to the provisions of this
7 chapter and the corporation [~~taxable entity~~] wilfully:

8 (1) fails to file a report;

9 (2) fails to keep books and records as required by this
10 chapter;

11 (3) files a fraudulent report;

12 (4) violates any rule of the comptroller for the
13 administration and enforcement of the provisions of this chapter;

14 or

15 (5) attempts in any other manner to evade or defeat any
16 tax imposed by this chapter or the payment of the tax.

17 (b) A person commits an offense if the person is an
18 accountant or an agent for or an officer or employee of a
19 corporation [~~taxable entity~~] and the person knowingly enters or
20 provides false information on any report, return, or other document
21 filed by the corporation [~~taxable entity~~] under this chapter.

22 SECTION 18. Section 171.401, Tax Code, is amended to read as
23 follows:

24 Sec. 171.401. REVENUE DEPOSITED IN GENERAL REVENUE FUND.
25 The revenue from the tax imposed by this chapter on corporations
26 shall be deposited to the credit of the general revenue fund.

27 SECTION 19. Sections 313.024(a) and (b), Tax Code, are

1 amended to read as follows:

2 (a) This subchapter and Subchapters C and D apply only to
3 property owned by a corporation or limited liability company [~~an~~
4 ~~entity~~] to which Chapter 171 applies.

5 (b) To be eligible for a limitation on appraised value under
6 this subchapter, the corporation or limited liability company
7 [~~entity~~] must use the property in connection with:

- 8 (1) manufacturing;
- 9 (2) research and development;
- 10 (3) a clean coal project, as defined by Section 5.001,
11 Water Code;
- 12 (4) an advanced clean energy project, as defined by
13 Section 382.003, Health and Safety Code;
- 14 (5) renewable energy electric generation;
- 15 (6) electric power generation using integrated
16 gasification combined cycle technology; or
- 17 (7) nuclear electric power generation.

18 SECTION 20. The following statutes are repealed:

- 19 (1) Section 171.0001, Tax Code;
- 20 (2) Section 171.0002, Tax Code;
- 21 (3) Section 171.0003, Tax Code;
- 22 (4) Section 171.0004, Tax Code;
- 23 (5) Section 171.0021, Tax Code;
- 24 (6) Section 171.003, Tax Code;
- 25 (7) Section 171.006, Tax Code;
- 26 (8) Section 171.088, Tax Code;
- 27 (9) Section 171.1011, Tax Code;

- 1 (10) Section 171.1012, Tax Code;
- 2 (11) Section 171.1013, Tax Code;
- 3 (12) Section 171.1014, Tax Code;
- 4 (13) Section 171.1015, Tax Code;
- 5 (14) Section 171.1016, Tax Code;
- 6 (15) Section 171.1055, Tax Code;
- 7 (16) Section 171.111, Tax Code;
- 8 (17) Section 171.2125, Tax Code;
- 9 (18) Section 171.214, Tax Code;
- 10 (19) Section 171.2515, Tax Code;
- 11 (20) Section 171.3015, Tax Code;
- 12 (21) Section 171.3125, Tax Code; and
- 13 (22) Section 171.4011, Tax Code.

14 SECTION 21. (a) The repeal of Section 171.111, Tax Code, by
15 this Act does not affect a credit that was established under that
16 section before the effective date of this Act.

17 (b) A corporation that has any unused credits established
18 before the effective date of this Act under Section 171.111, Tax
19 Code, may claim those unused credits on or with the tax report for
20 the period in which the credits were established, and the former law
21 under which the corporation established the credits is continued in
22 effect for purposes of determining the amount of the credits the
23 corporation may claim and the manner in which the corporation may
24 claim the credits.

25 SECTION 22. (a) This Act applies only to a report
26 originally due on or after the effective date of this Act.

27 (b) The change in law made by this Act does not affect the

1 obligation for or the payment, computation, and collection of the
2 franchise tax for a report originally due before the effective date
3 of this Act. The obligation for and the payment, computation, and
4 collection of the franchise tax for a report originally due before
5 the effective date of this Act is governed by the law in effect on
6 the date the report was originally due and that law is continued in
7 effect for those purposes.

8 SECTION 23. This Act takes effect January 1, 2010.