

By: Howard of Fort Bend

H.B. No. 4269

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the definition of passive entity for purposes of the  
3 franchise tax.

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

5 SECTION 1. Section 171.0003(a), Tax Code, is amended to  
6 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; and

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 without regard to capital losses suffered on separate real  
23 property, gains from the sale of commodities traded on a  
24 commodities exchange, and gains from the sale of securities; and

1                   (D) royalties, bonuses, or delay rental income  
2 from mineral properties and income from other nonoperating mineral  
3 interests [~~and~~

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

7           SECTION 2. Sections 171.0003(a-1) and 171.0004, Tax Code,  
8 are repealed.

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

11           SECTION 4. This Act takes effect January 1, 2010.