

By: Perry

H.B. No. 2250

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the franchise tax; changing the manner in which the  
3 franchise tax is computed and the rate of the tax; authorizing a  
4 filing fee; repealing the fee for failing to timely file a report.

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

6 SECTION 1. Section 171.0001, Tax Code, is amended to read as  
7 follows:

8 Sec. 171.0001. GENERAL DEFINITIONS. In this chapter:

9 (1) "Affiliated group" means a group of one or more  
10 entities in which a controlling interest is owned by a common owner  
11 or owners, either corporate or noncorporate, or by one or more of  
12 the member entities.

13 [~~(1-a) "Artist" means a natural person or an entity~~  
14 ~~that contracts to perform or entertain at a live entertainment~~  
15 ~~event.~~]

16 (2) [~~"Assigned employee" has the meaning assigned by~~  
17 ~~Section 91.001, Labor Code.~~]

18 [~~(3)~~] "Banking corporation" means each state,  
19 national, domestic, or foreign bank, whether organized under the  
20 laws of this state, another state, or another country, or under  
21 federal law, including a limited banking association organized  
22 under Subtitle A, Title 3, Finance Code, and each bank organized  
23 under Section 25A [~~25(a)~~], Federal Reserve Act (12 U.S.C. Sections  
24 611-631) (edge corporations), but does not include a bank holding

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

3 (3) [~~(4)~~] "Beginning date" means:

4 (A) for a taxable entity chartered or organized  
5 in this state, the date on which the taxable entity's charter or  
6 organization takes effect; and

7 (B) for any other taxable entity, the date on  
8 which the taxable entity begins doing business in this state.

9 (4) [~~(5)~~] "Charter" includes a limited liability  
10 company's certificate of organization, a limited partnership's  
11 certificate of limited partnership, and the registration of a  
12 limited liability partnership.

13 (5) [~~(6)~~] ~~"Client company" means:~~

14 [~~(A) a person that contracts with a license~~  
15 ~~holder under Chapter 91, Labor Code, and is assigned employees by~~  
16 ~~the license holder under that contract; or~~

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

21 [~~(7) "Combined group" means taxable entities that are~~  
22 ~~part of an affiliated group engaged in a unitary business and that~~  
23 ~~are required to file a group report under Section 171.1014.~~

24 [~~(8) "Controlling interest" means:~~

25 [~~(A) for a corporation, either more than 50~~  
26 ~~percent, owned directly or indirectly, of the total combined voting~~  
27 ~~power of all classes of stock of the corporation, or more than 50~~

1 ~~percent, owned directly or indirectly, of the beneficial ownership~~  
2 ~~interest in the voting stock of the corporation;~~

3 ~~[(B) for a partnership, association, trust, or~~  
4 ~~other entity other than a limited liability company, more than 50~~  
5 ~~percent, owned directly or indirectly, of the capital, profits, or~~  
6 ~~beneficial interest in the partnership, association, trust, or~~  
7 ~~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  
15 Revenue Code of 1986 in effect for the federal tax year beginning on  
16 January 1, 2013 ~~[2007]~~, not including any changes made by federal  
17 law after that date, and any regulations adopted under that code  
18 applicable to that period.

19 (6) ~~[(10)]~~ "Lending institution" means an entity that  
20 ~~makes 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 Credit Union~~  
26 ~~Department, or any comparable regulatory body;~~

27 ~~[(B) is licensed by, registered with, or~~

1 ~~otherwise regulated by the Department of Savings and Mortgage~~  
2 ~~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 ~~[(10-a) "Live entertainment event" means an event that~~  
8 ~~occurs on a specific date to which tickets are sold in advance by a~~  
9 ~~third-party vendor and at which:~~

10 ~~[(A) a natural person or a group of natural~~  
11 ~~persons, physically present at the venue, performs for the purpose~~  
12 ~~of entertaining a ticket holder who is present at the event;~~

13 ~~[(B) a traveling circus or animal show performs~~  
14 ~~for the purpose of entertaining a ticket holder who is present at~~  
15 ~~the event; or~~

16 ~~[(C) a historical, museum-quality artifact is on~~  
17 ~~display in an exhibition.~~

18 ~~[(10-b) "Live event promotion services" means~~  
19 ~~services related to the promotion, coordination, operation, or~~  
20 ~~management of a live entertainment event. The term includes~~  
21 ~~services related to:~~

22 ~~[(A) the provision of staff for the live~~  
23 ~~entertainment event; or~~

24 ~~[(B) the scheduling and promotion of an artist~~  
25 ~~performing or entertaining at the live entertainment event.~~

26 ~~[(11) "Management company" means a corporation,~~  
27 ~~limited liability company, or other limited liability entity that~~

1 ~~conducts all or part of the active trade or business of another~~  
2 ~~entity (the "managed entity") in exchange for:~~

3 ~~[(A) a management fee, and~~

4 ~~[(B) reimbursement of specified costs incurred~~  
5 ~~in the conduct of the active trade or business of the managed~~  
6 ~~entity, including "wages and cash compensation" as determined under~~  
7 ~~Sections 171.1013(a) and (b).~~

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

13 (7) "Officer" and "director" include a limited  
14 liability company's directors and managers and a limited banking  
15 association's directors and managers and participants if there are  
16 no directors or managers.

17 (8) [(11-b)] "Qualified live event promotion company"  
18 ~~means a taxable entity that:~~

19 ~~[(A) receives at least 50 percent of the entity's~~  
20 ~~annual total revenue from the provision or arrangement for the~~  
21 ~~provision of three or more live event promotion services,~~

22 ~~[(B) maintains a permanent nonresidential office~~  
23 ~~from which the live event promotion services are provided or~~  
24 ~~arranged,~~

25 ~~[(C) employs 10 or more full-time employees~~  
26 ~~during all or part of the period for which taxable margin is~~  
27 ~~calculated,~~

1                   ~~[(D) does not provide services for a wedding or~~  
2 ~~carnival; and~~

3                   ~~[(E) is not a movie theater.]~~

4                   ~~[(12) "Retail trade" means:~~

5                   ~~[(A) the activities described in Division C of~~  
6 ~~the 1987 Standard Industrial Classification Manual published by the~~  
7 ~~federal Office of Management and Budget; and~~

8                   ~~[(B) apparel rental activities classified as~~  
9 ~~Industry 5999 or 7299 of the 1987 Standard Industrial~~  
10 ~~Classification Manual published by the federal Office of Management~~  
11 ~~and Budget.]~~

12                   ~~[(13)]~~ "Savings and loan association" means a savings  
13 and loan association or savings bank, whether organized under the  
14 laws of this state, another state, or another country, or under  
15 federal law.

16                   (9) ~~[(13-a) "Security," for purposes of Sections~~  
17 ~~171.1011(g), 171.1011(g-2), and 171.106(f) only, has the meaning~~  
18 ~~assigned by Section 475(c)(2), Internal Revenue Code, and includes~~  
19 ~~instruments described by Sections 475(e)(2)(B), (C), and (D) of~~  
20 ~~that code.]~~

21                   ~~[(14)]~~ "Shareholder" includes a limited liability  
22 company's member and a limited banking association's participant.

23                   (10) ~~[(15) "Staff leasing services company" means:~~

24                   ~~[(A) a business entity that offers staff leasing~~  
25 ~~services, as that term is defined by Section 91.001, Labor Code; or~~

26                   ~~[(B) a temporary employment service, as that term~~  
27 ~~is defined by Section 93.001, Labor Code.]~~

1           ~~[(16) "Total revenue" means the total revenue of a~~  
2 ~~taxable entity as determined under Section 171.1011.~~

3           ~~[(17)]~~ "Unitary business" means a single economic  
4 enterprise that is made up of separate parts of a single entity or  
5 of a commonly controlled group of entities that are sufficiently  
6 interdependent, integrated, and interrelated through their  
7 activities so as to provide a synergy and mutual benefit that  
8 produces a sharing or exchange of value among them and a significant  
9 flow of value to the separate parts. In determining whether a  
10 unitary business exists, the comptroller shall consider any  
11 relevant factor, including whether:

12           (A) the activities of the group members are in  
13 the same general line, such as manufacturing, wholesaling,  
14 retailing of tangible personal property, insurance,  
15 transportation, or finance;

16           (B) the activities of the group members are steps  
17 in a vertically structured enterprise or process, such as the steps  
18 involved in the production of natural resources, including  
19 exploration, mining, refining, and marketing; or

20           (C) the members are functionally integrated  
21 through the exercise of strong centralized management, such as  
22 authority over purchasing, financing, product line, personnel, and  
23 marketing.

24           ~~[(18) "Wholesale trade" means the activities~~  
25 ~~described in Division F of the 1987 Standard Industrial~~  
26 ~~Classification Manual published by the federal Office of Management~~  
27 ~~and Budget.]~~

1 SECTION 2. Section 171.0002(a), Tax Code, is amended to  
2 read as follows:

3 (a) Except as otherwise provided by this section, "taxable  
4 entity" means a partnership, limited liability partnership,  
5 corporation, banking corporation, savings and loan association,  
6 limited liability company, business trust, professional  
7 association, business association, joint venture, joint stock  
8 company, holding company, or other legal entity. [~~The term~~  
9 ~~includes a combined group.~~] A joint venture does not include joint  
10 operating or co-ownership arrangements meeting the requirements of  
11 Treasury Regulation Section 1.761-2(a)(3) that elect out of federal  
12 partnership treatment as provided by Section 761(a), Internal  
13 Revenue Code.

14 SECTION 3. Section 171.0003(a), Tax Code, is amended to  
15 read as follows:

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

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

19 (2) during the period on which earned surplus [~~margin~~]  
20 is based, the entity's federal gross income consists of at least 90  
21 percent of the following income:

22 (A) dividends, interest, foreign currency  
23 exchange gain, periodic and nonperiodic payments with respect to  
24 notional principal contracts, option premiums, cash settlement or  
25 termination payments with respect to a financial instrument, and  
26 income from a limited liability company;

27 (B) distributive shares of partnership income to



1 the extent that those distributive shares of income are greater  
2 than zero;

3 (C) capital gains from the sale of real property,  
4 gains from the sale of commodities traded on a commodities  
5 exchange, and gains from the sale of securities; and

6 (D) royalties, bonuses, or delay rental income  
7 from mineral properties and income from other nonoperating mineral  
8 interests; and

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

12 SECTION 4. Section 171.0011(b), Tax Code, is amended to  
13 read as follows:

14 (b) The additional tax is equal to 0.25 percent of the  
15 taxable entity's net taxable earned surplus [~~the appropriate rate~~  
16 ~~under Section 171.002 of the taxable entity's taxable margin~~]  
17 computed on the period beginning on the day after the last day for  
18 which the tax imposed on taxable margin or net taxable earned  
19 surplus was computed and ending on the date the taxable entity is no  
20 longer subject to the tax imposed under this chapter.

21 SECTION 5. Section 171.002, Tax Code, is amended by  
22 amending Subsections (a) and (d) and adding Subsection (e) to read  
23 as follows:

24 (a) The [~~Subject to Sections 171.003 and 171.1016 and except~~  
25 ~~as provided by Subsection (b), the~~] rate of the franchise tax is  
26 0.25 [~~one~~] percent of net taxable earned surplus [~~margin~~].

27 (d) A taxable entity is not required to pay any tax and is

1 not considered to owe any tax for a period if:

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

4 (2) the taxable entity:

5 (A) is not part of an affiliated group engaged in  
6 a unitary business and the amount of the taxable entity's gross  
7 receipts [~~total revenue~~] from its [~~entire~~] business done in this  
8 state under Section 171.1032 is less than or equal to \$1 million; or

9 (B) is part of an affiliated group engaged in a  
10 unitary business and the total amount of gross receipts of all  
11 taxable entities that are part of that affiliated group from their  
12 business done in this state under Section 171.1032 is less than or  
13 equal to \$1 million [~~or the amount determined under Section 171.006~~  
14 ~~per 12-month period on which margin is based]~~.

15 (e) If the amount of tax computed to be due under this  
16 chapter for any privilege period is less than zero, the comptroller  
17 shall consider the amount to be zero.

18 SECTION 6. The heading to Subchapter C, Chapter 171, Tax  
19 Code, is amended to read as follows:

20 SUBCHAPTER C. DETERMINATION OF TAXABLE EARNED SURPLUS [~~MARGIN~~];

21 ALLOCATION AND APPORTIONMENT

22 SECTION 7. Subchapter C, Chapter 171, Tax Code, is amended  
23 by adding Section 171.1032 to read as follows:

24 Sec. 171.1032. DETERMINATION OF GROSS RECEIPTS FROM  
25 BUSINESS DONE IN THIS STATE FOR TAXABLE EARNED SURPLUS. (a) Except  
26 for the gross receipts of a taxable entity that are subject to  
27 Section 171.1061, in apportioning taxable earned surplus, the gross

1 receipts of a taxable entity from its business done in this state is  
2 the sum of the taxable entity's receipts from:

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

10 (2) each service performed in this state;

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

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

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

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

18 (7) other business done in this state.

19 (b) A taxable entity shall deduct from its gross receipts  
20 computed under Subsection (a) any amount to the extent included  
21 under Subsection (a) because of the application of Section 78 or  
22 Sections 951-964, Internal Revenue Code, any amount excludable  
23 under Section 171.110(i), and dividends received from a subsidiary,  
24 associate, or affiliated corporation that does not transact a  
25 substantial portion of its business or regularly maintain a  
26 substantial portion of its assets in the United States.

27 (c) A taxable entity shall include in its gross receipts

1 computed under Subsection (a) the taxable entity's share of the  
2 gross receipts of each partnership and joint venture of which the  
3 taxable entity is a part apportioned to this state as though the  
4 taxable entity directly earned the receipts, including receipts  
5 from business done with the taxable entity.

6 SECTION 8. Subchapter C, Chapter 171, Tax Code, is amended  
7 by adding Section 171.1051 to read as follows:

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

14 (1) each sale of the taxable entity's tangible  
15 personal property;

16 (2) each service, rental, or royalty;

17 (3) each partnership and joint venture as provided by  
18 Subsection (d); and

19 (4) other business.

20 (b) If a taxable entity sells an investment or capital  
21 asset, the taxable entity's gross receipts from its entire business  
22 for taxable earned surplus includes only the net gain from the sale.

23 (c) A taxable entity shall deduct from its gross receipts  
24 computed under Subsection (a) any amount to the extent included in  
25 Subsection (a) because of the application of Section 78 or Sections  
26 951-964, Internal Revenue Code, any amount excludable under Section  
27 171.110(i), and dividends received from a subsidiary, associate, or

1 affiliated corporation that does not transact a substantial portion  
2 of its business or regularly maintain a substantial portion of its  
3 assets in the United States.

4 (d) A taxable entity shall include in its gross receipts  
5 computed under Subsection (a) the taxable entity's share of the  
6 gross receipts of each partnership and joint venture of which the  
7 taxable entity is a part.

8 SECTION 9. The heading to Section 171.106, Tax Code, is  
9 amended to read as follows:

10 Sec. 171.106. APPORTIONMENT OF TAXABLE EARNED SURPLUS  
11 [MARGIN] TO THIS STATE.

12 SECTION 10. Sections 171.106(a), (b), and (c), Tax Code,  
13 are amended to read as follows:

14 (a) Except as provided by Subsections (b) and (c) [~~this~~  
15 ~~section~~], a taxable entity's taxable earned surplus [~~margin~~] is  
16 apportioned to this state to determine the amount of tax imposed  
17 under Section 171.002 by multiplying the taxable earned surplus  
18 [~~margin~~] by a fraction, the numerator of which is the taxable  
19 entity's gross receipts from business done in this state, as  
20 determined under Section 171.1032 [~~171.103~~], and the denominator of  
21 which is the taxable entity's gross receipts from its entire  
22 business, as determined under Section 171.1051 [~~171.105~~].

23 (b) A taxable entity's taxable earned surplus [~~margin~~] that  
24 is derived, directly or indirectly, from the sale of management,  
25 distribution, or administration services to or on behalf of a  
26 regulated investment company, including a taxable entity that  
27 includes trustees or sponsors of employee benefit plans that have

1 accounts in a regulated investment company, is apportioned to this  
2 state to determine the amount of the tax imposed under Section  
3 171.002 by multiplying the taxable entity's total taxable earned  
4 surplus [~~margin~~] from the sale of services to or on behalf of a  
5 regulated investment company by a fraction, the numerator of which  
6 is the average of the sum of shares owned at the beginning of the  
7 year and the sum of shares owned at the end of the year by the  
8 investment company shareholders who are commercially domiciled in  
9 this state or, if the shareholders are individuals, are residents  
10 of this state, and the denominator of which is the average of the  
11 sum of shares owned at the beginning of the year and the sum of  
12 shares owned at the end of the year by all investment company  
13 shareholders. In this subsection, "regulated investment company"  
14 has the meaning assigned by Section 851(a), Internal Revenue Code.

15 (c) A taxable entity's taxable earned surplus [~~margin~~] that  
16 is derived, directly or indirectly, from the sale of management,  
17 administration, or investment services to an employee retirement  
18 plan is apportioned to this state to determine the amount of the tax  
19 imposed under Section 171.002 by multiplying the taxable entity's  
20 total taxable earned surplus [~~margin~~] from the sale of services to  
21 an employee retirement plan company by a fraction, the numerator of  
22 which is the average of the sum of beneficiaries domiciled in Texas  
23 at the beginning of the year and the sum of beneficiaries domiciled  
24 in Texas at the end of the year, and the denominator of which is the  
25 average of the sum of all beneficiaries at the beginning of the year  
26 and the sum of all beneficiaries at the end of the year. In this  
27 section, "employee retirement plan" means a plan or other

1 arrangement that is qualified under Section 401(a), Internal  
2 Revenue Code, or satisfies the requirements of Section 403,  
3 Internal Revenue Code, or a government plan described in Section  
4 414(d), Internal Revenue Code. The term does not include an  
5 individual retirement account or individual retirement annuity  
6 within the meaning of Section 408, Internal Revenue Code.

7 SECTION 11. Subchapter C, Chapter 171, Tax Code, is amended  
8 by adding Section 171.1061 to read as follows:

9 Sec. 171.1061. ALLOCATION OF CERTAIN TAXABLE EARNED SURPLUS  
10 TO THIS STATE. An item of income included in a taxable entity's  
11 taxable earned surplus, except that portion derived from dividends  
12 and interest, that a state, other than this state, or a country,  
13 other than the United States, cannot tax because the activities  
14 generating that item of income do not have sufficient unitary  
15 connection with the taxable entity's other activities conducted  
16 within that state or country under the United States Constitution,  
17 is allocated to this state if the taxable entity's commercial  
18 domicile is in this state. Income that can only be allocated to the  
19 state of commercial domicile because the income has insufficient  
20 unitary connection with any other state or country shall be  
21 allocated to this state or another state or country net of expenses  
22 related to that income. A portion of a taxable entity's taxable  
23 earned surplus allocated to this state under this section may not be  
24 apportioned under Section 171.110(a)(2).

25 SECTION 12. The heading to Section 171.107, Tax Code, is  
26 amended to read as follows:

27 Sec. 171.107. DEDUCTION OF COST OF SOLAR ENERGY DEVICE FROM

1 TAXABLE EARNED SURPLUS [~~MARGIN~~] APPORTIONED TO THIS STATE.

2 SECTION 13. Section 171.107(b), Tax Code, is amended to  
3 read as follows:

4 (b) A taxable entity may deduct from its apportioned taxable  
5 earned surplus [~~margin~~] 10 percent of the amortized cost of a solar  
6 energy device if:

7 (1) the device is acquired by the taxable entity for  
8 heating or cooling or for the production of power;

9 (2) the device is used in this state by the taxable  
10 entity; and

11 (3) the cost of the device is amortized in accordance  
12 with Subsection (c).

13 SECTION 14. The heading to Section 171.108, Tax Code, is  
14 amended to read as follows:

15 Sec. 171.108. DEDUCTION OF COST OF CLEAN COAL PROJECT FROM  
16 TAXABLE EARNED SURPLUS [~~MARGIN~~] APPORTIONED TO THIS STATE.

17 SECTION 15. Section 171.108(b), Tax Code, is amended to  
18 read as follows:

19 (b) A taxable entity may deduct from its apportioned taxable  
20 earned surplus [~~margin~~] 10 percent of the amortized cost of  
21 equipment:

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

23 (2) that is acquired by the taxable entity for use in  
24 generation of electricity, production of process steam, or  
25 industrial production;

26 (3) that the taxable entity uses in this state; and

27 (4) the cost of which is amortized in accordance with



1 Subsection (c).

2 SECTION 16. Subchapter C, Chapter 171, Tax Code, is amended  
3 by adding Section 171.110 to read as follows:

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

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

6 (1) determining the corporation's reportable federal  
7 taxable income, subtracting from that amount any amount excludable  
8 under Subsection (i), any amount included in reportable federal  
9 taxable income under Section 78 or Sections 951-964, Internal  
10 Revenue Code, and dividends received from a subsidiary, associate,  
11 or affiliated corporation that does not transact a substantial  
12 portion of its business or regularly maintain a substantial portion  
13 of its assets in the United States, and adding to that amount any  
14 compensation of officers or directors in excess of \$300,000 per  
15 person, or if a bank, any compensation of directors and executive  
16 officers in excess of \$300,000 per person, to the extent excluded in  
17 determining federal taxable income to determine the corporation's  
18 taxable earned surplus;

19 (2) apportioning the corporation's taxable earned  
20 surplus to this state as provided by Section 171.106(a), (b), or  
21 (c), as applicable, to determine the corporation's apportioned  
22 taxable earned surplus;

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

25 (4) subtracting from that amount any allowable  
26 deductions and any business loss that is carried forward to the tax  
27 reporting period and deductible under Subsection (c).

1       (b) A corporation's reportable federal taxable income is  
2 the corporation's federal taxable income after Schedule C special  
3 deductions and before net operating loss deductions as computed  
4 under the Internal Revenue Code, except that an S corporation's  
5 reportable federal taxable income is the amount of the income  
6 reportable to the Internal Revenue Service as taxable to the  
7 corporation's shareholders.

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

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

25       (e) For purposes of this section, an approved employee stock  
26 ownership plan controlling a minority interest and voted through a  
27 single trustee shall be considered one shareholder.

1       (f) A corporation shall report its net taxable earned  
2 surplus based solely on its own financial condition. Consolidated  
3 reporting is prohibited.

4       (g) For purposes of this section, any person designated as  
5 an officer is presumed to be an officer if that person:

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

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

10       (h) A corporation may rebut the presumption described in  
11 Subsection (g) that a person is an officer if it conclusively shows,  
12 through the person's job description or other documentation, that  
13 the person does not participate or have authority to participate in  
14 significant policymaking aspects of the corporate operations.

15       (i) Dividends and interest received from federal  
16 obligations are not included in earned surplus or gross receipts  
17 for earned surplus purposes.

18       (j) For a taxable entity other than a taxable entity treated  
19 for federal income tax purposes as a corporation, the net taxable  
20 earned surplus is computed in a manner substantially similar to the  
21 manner provided by this section for a corporation, under rules that  
22 the comptroller shall adopt. For a taxable entity treated for  
23 federal income tax purposes as a partnership, disregarded entity,  
24 or other entity on which federal income tax is not imposed, the  
25 comptroller's rules shall treat the entity as if the entity were  
26 subject to federal income tax.

27       (k) In this section:

1           (1) "Federal obligations" means:

2                   (A) stocks and other direct obligations of, and  
3 obligations unconditionally guaranteed by, the United States  
4 government and United States government agencies; and

5                   (B) direct obligations of a United States  
6 government-sponsored agency.

7           (2) "Obligation" means any bond, debenture, security,  
8 mortgage-backed security, pass-through certificate, or other  
9 evidence of indebtedness of the issuing entity. The term does not  
10 include a deposit, a repurchase agreement, a loan, a lease, a  
11 participation in a loan or pool of loans, a loan collateralized by  
12 an obligation of a United States government agency, or a loan  
13 guaranteed by a United States government agency.

14           (3) "United States government" means any department or  
15 ministry of the federal government, including a federal reserve  
16 bank. The term does not include a state or local government, a  
17 commercial enterprise owned wholly or partly by the United States  
18 government, or a local governmental entity or commercial enterprise  
19 whose obligations are guaranteed by the United States government.

20           (4) "United States government agency" means an  
21 instrumentality of the United States government whose obligations  
22 are fully and explicitly guaranteed as to the timely payment of  
23 principal and interest by the full faith and credit of the United  
24 States government. The term includes the Government National  
25 Mortgage Association, the Department of Veterans Affairs, the  
26 Federal Housing Administration, the Farmers Home Administration,  
27 the Export-Import Bank of the United States, the Overseas Private

1 Investment Corporation, the Commodity Credit Corporation, the  
2 Small Business Administration, and any successor agency.

3 (5) "United States government-sponsored agency" means  
4 an agency originally established or chartered by the United States  
5 government to serve public purposes specified by the United States  
6 Congress but whose obligations are not explicitly guaranteed by the  
7 full faith and credit of the United States government. The term  
8 includes the Federal Home Loan Mortgage Corporation, the Federal  
9 National Mortgage Association, the Farm Credit System, the Federal  
10 Home Loan Bank System, the Student Loan Marketing Association, and  
11 any successor agency.

12 SECTION 17. Section 171.1121, Tax Code, is amended to read  
13 as follows:

14 Sec. 171.1121. GROSS RECEIPTS FOR TAXABLE EARNED SURPLUS  
15 [MARGIN]. (a) For purposes of this section, "gross receipts" means  
16 all revenues reportable by a taxable entity on its federal tax  
17 return, without deduction for the cost of property sold, materials  
18 used, labor performed, or other costs incurred, unless otherwise  
19 specifically provided in this chapter. "Gross receipts" does not  
20 include revenues that are not included in taxable earned surplus.  
21 For example, Schedule C special deductions and any amounts  
22 subtracted from reportable federal taxable income under Section  
23 171.110(a)(1) are not included in taxable earned surplus and  
24 therefore are not considered gross receipts.

25 (b) Except as otherwise provided by this section, a taxable  
26 entity shall use the same accounting methods to apportion taxable  
27 earned surplus [margin] as used in computing reportable federal

1 taxable income [~~margin~~].

2 (c) A taxable entity shall report its gross receipts based  
3 solely on its own financial condition. Consolidated reporting is  
4 prohibited.

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

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

20 SECTION 18. The heading to Section 171.1532, Tax Code, is  
21 amended to read as follows:

22 Sec. 171.1532. BUSINESS ON WHICH TAX ON NET TAXABLE EARNED  
23 SURPLUS [~~MARGIN~~] IS BASED.

24 SECTION 19. Sections 171.202(a) and (d), Tax Code, are  
25 amended to read as follows:

26 (a) Except as provided by Section 171.2022, a taxable entity  
27 on which the franchise tax is imposed shall file an annual report

1 with the comptroller containing:

2 (1) financial information of the taxable entity  
3 necessary to compute the tax under this chapter;

4 (2) the name and address of each officer and director  
5 of the taxable entity;

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

8 (4) a copy of the taxable entity's federal income tax  
9 return if the taxable entity filed a federal income tax return, a  
10 copy of any consolidated federal income tax return that includes  
11 information about the taxable entity's income if the taxable entity  
12 is a member of a federal affiliated group that filed a consolidated  
13 federal income tax return, or a copy of any federal income tax  
14 return that includes information about the taxable entity's income  
15 if the taxable entity is treated as a disregarded entity for federal  
16 income tax purposes; and

17 (5) other information required by the comptroller.

18 (d) In the case of a taxpayer whose previous return was its  
19 initial report, the optional payment provided under Subsection  
20 (c)(2)(B) or (e)(2)(B) must be equal to an amount produced by  
21 multiplying the net taxable earned surplus ~~[margin]~~, as reported on  
22 the initial report filed on or before May 14, by the rate of tax in  
23 Section 171.002 that is effective January 1 of the year in which the  
24 report is due.

25 SECTION 20. Section 171.203, Tax Code, is amended by  
26 amending Subsections (a), (b), (d), and (e) and adding Subsections  
27 (a-1), (a-2), (a-3), (a-4), and (d-1) to read as follows:

1           (a) A taxable entity [~~corporation or limited liability~~  
2 ~~company~~] on which the franchise tax is imposed, regardless of  
3 whether the taxable entity [~~corporation or limited liability~~  
4 ~~company~~] is required to pay any tax, shall file a report with the  
5 comptroller containing the taxable entity's name, taxpayer number,  
6 file number assigned by the secretary of state, or other  
7 information required by the comptroller to identify the taxable  
8 entity. A taxable entity, other than a nonprofit entity, shall  
9 remit with the report a \$200 filing fee.

10           (a-1) Except as provided by Subsection (a-2), to determine  
11 eligibility for the exemption provided by Section 171.2022, or to  
12 determine the amount of the franchise tax or the correctness of a  
13 franchise tax report, the comptroller may require a taxable entity  
14 that may be subject to the tax imposed under this chapter to include  
15 on the report under Subsection (a) the amount of the taxable  
16 entity's taxable earned surplus or any other information the  
17 comptroller may request that is necessary to make a determination  
18 under this subsection.

19           (a-2) The comptroller may require a taxable entity that does  
20 not owe any tax because of the application of Section 171.002(d)(2)  
21 to include on the report under Subsection (a) the amount of the  
22 taxable entity's gross receipts from its business done in this  
23 state. The comptroller may not require a taxable entity described  
24 by this subsection to report or compute its taxable earned surplus.

25           (a-3) The comptroller may require any entity to file  
26 information as necessary to verify that the entity is not subject to  
27 the tax imposed under this chapter.



1        (a-4) A corporation or limited liability company shall  
2 include on the report under Subsection (a):

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

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

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

14           (4) the name and address of the agent of the  
15 corporation or limited liability company designated under Section  
16 171.354; and

17           (5) the address of the corporation's or limited  
18 liability company's principal office and principal place of  
19 business.

20        (b) The taxable entity [~~corporation or limited liability~~  
21 ~~company~~] shall file the report once a year on a form prescribed by  
22 the comptroller.

23        (d) A [~~The~~] corporation or limited liability company shall  
24 send a copy of the report to each person named in the report under  
25 Subsection (a-4)(3) [~~(a)(3)~~] who is not currently employed by the  
26 corporation or limited liability company or a related corporation  
27 or limited liability company listed in Subsection (a-4)(1) [~~(a)(1)~~]

1 or (2).

2        (d-1) An officer or director of the taxable entity  
3 [~~corporation or limited liability company~~] or another authorized  
4 person must sign the report under a certification that:

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

7            (2) a copy of the report has been mailed to each person  
8 identified in Subsection (d) [~~this subsection~~] on the date the  
9 return is filed, if applicable.

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

19        SECTION 21. Section 171.206, Tax Code, is amended to read as  
20 follows:

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

24            (1) information that is obtained from a record or  
25 other instrument that is required by this chapter to be filed with  
26 the comptroller including information required under Sections  
27 171.203(a-1), (a-2), and (a-3); or

1           (2) information, including information about the  
2 business affairs, operations, profits, losses, [~~cost of goods sold,~~  
3 ~~compensation,~~] or expenditures of a taxable entity, obtained by an  
4 examination of the books and records, officers, partners, trustees,  
5 agents, or employees of a taxable entity on which a tax is imposed  
6 by this chapter.

7           SECTION 22. Section 171.207, Tax Code, is amended to read as  
8 follows:

9           Sec. 171.207. INFORMATION NOT CONFIDENTIAL. The following  
10 information is not confidential and shall be made open to public  
11 inspection:

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

14           (2) information contained in a report required by  
15 Section 171.203, other than information required under Section  
16 171.203(a-1), (a-2), or (a-3) [or 171.2035].

17           SECTION 23. Section 171.208, Tax Code, is amended to read as  
18 follows:

19           Sec. 171.208. PROHIBITION OF DISCLOSURE OF INFORMATION. A  
20 person, including a state officer or employee or an owner of a  
21 taxable entity, who has access to a report filed under this chapter  
22 may not make known in a manner not permitted by law the amount or  
23 source of the taxable entity's income, profits, losses,  
24 expenditures, [~~cost of goods sold, compensation,~~] or other  
25 information in the report relating to the financial condition of  
26 the taxable entity.

27           SECTION 24. Section 171.212(a), Tax Code, is amended to

1 read as follows:

2 (a) A taxable entity must file an amended report under this  
3 chapter if:

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

7 (2) the taxable entity files an amended federal income  
8 tax return or other return that changes the taxable entity's net  
9 taxable earned surplus ~~[margin]~~.

10 SECTION 25. Subchapter E, Chapter 171, Tax Code, is amended  
11 by adding Section 171.216 to read as follows:

12 Sec. 171.216. SUNSET REVIEW OF CERTAIN PROVISIONS BY  
13 COMPTROLLER. (a) Not later than January 1, 2023, the comptroller  
14 shall review and issue a written report to the 88th Legislature  
15 recommending whether the following provisions should be continued  
16 in effect or amended:

17 (1) the rate of the franchise tax and the application  
18 of the franchise tax to a taxable entity's net taxable earned  
19 surplus under Section 171.002(a);

20 (2) the amount of a taxable entity's gross receipts  
21 from its business done in this state that results in the exemption  
22 provided by Section 171.002(d)(2); and

23 (3) the compensation that a taxable entity must add  
24 under Section 171.110(a)(1).

25 (b) The comptroller shall consider the following criteria  
26 in determining whether to recommend a provision described by  
27 Subsection (a) be continued in effect or amended:

1           (1) the efficiency and effectiveness of the franchise  
2 tax with the provision;

3           (2) the purposes for the franchise tax and the extent  
4 to which the purposes have been achieved with the provision; and

5           (3) the estimated fiscal impact of any proposed  
6 amendment to the provision.

7           SECTION 26. Sections 171.362(a) and (b), Tax Code, are  
8 amended to read as follows:

9           (a) If a taxable entity on which a tax is imposed by this  
10 chapter fails to pay the tax when it is due and payable or fails to  
11 file a report required by this chapter when it is due, the taxable  
12 entity is liable for a penalty of five percent of the amount of the  
13 tax due and of the filing fee due under Section 171.203(a).

14           (b) If the tax is not paid or the report is not filed within  
15 30 days after the due date, a penalty of an additional five percent  
16 of the tax due and of the filing fee due under Section 171.203(a) is  
17 imposed.

18           SECTION 27. Subchapter H, Chapter 490, Government Code, is  
19 transferred to Chapter 171, Tax Code, redesignated as Subchapter L,  
20 Chapter 171, Tax Code, and amended to read as follows:

21           SUBCHAPTER L. [~~H. FRANCHISE~~] TAX CREDIT FOR CLEAN ENERGY PROJECT

22           Sec. 171.651 [~~490.351~~]. DEFINITION. In this subchapter,  
23 "clean energy project" has the meaning assigned by Section 120.001,  
24 Natural Resources Code.

25           Sec. 171.652. [~~490.352. FRANCHISE~~] TAX CREDIT FOR CLEAN  
26 ENERGY PROJECT. (a) The comptroller shall adopt rules for issuing  
27 to an entity implementing a clean energy project in this state a

1 ~~[franchise tax]~~ credit against the tax imposed under this chapter.

2 A clean energy project is eligible for a ~~[franchise tax]~~ credit  
3 only if the project is implemented in connection with the  
4 construction of a new facility.

5 (b) The comptroller shall issue a ~~[franchise tax]~~ credit to  
6 an entity operating a clean energy project after:

7 (1) the Railroad Commission of Texas has issued a  
8 certificate of compliance for the project to the entity as provided  
9 by Section 120.004, Natural Resources Code;

10 (2) the construction of the project has been  
11 completed;

12 (3) the electric generating facility associated with  
13 the project is fully operational;

14 (4) the Bureau of Economic Geology of The University  
15 of Texas at Austin verifies to the comptroller that the electric  
16 generating facility associated with the project is sequestering at  
17 least 70 percent of the carbon dioxide resulting from or associated  
18 with the generation of electricity by the facility; and

19 (5) the owner or operator of the project has entered  
20 into an interconnection agreement relating to the project with the  
21 Electric Reliability Council of Texas.

22 (c) The total amount of the ~~[franchise tax]~~ credit that may  
23 be issued to the entity designated in the certificate of compliance  
24 for a clean energy project is equal to the lesser of:

25 (1) 10 percent of the total capital cost of the  
26 project, including the cost of designing, engineering, permitting,  
27 constructing, and commissioning the project, the cost of procuring

1 land, water, and equipment for the project, and all fees, taxes, and  
2 commissions paid and other payments made in connection with the  
3 project but excluding the cost of financing the capital cost of the  
4 project; or

5 (2) \$100 million.

6 (d) The amount of the [~~franchise tax~~] credit for each report  
7 year is calculated by determining the amount of [~~franchise~~] tax  
8 imposed under this chapter that is due based on the net taxable  
9 earned surplus [~~margin~~] generated by a clean energy project from  
10 the generation and sale of power and the sale of any products that  
11 are produced by the electric generation facility. The amount of the  
12 [~~franchise tax~~] credit claimed under this section for a report year  
13 may not exceed the amount of [~~franchise~~] tax under this chapter  
14 attributable to the clean energy project for that report year.

15 [~~(c) The comptroller may not issue a franchise tax credit~~  
16 ~~under this section before September 1, 2013. This subsection~~  
17 ~~expires September 2, 2013.~~]

18 SECTION 28. The following provisions of the Tax Code are  
19 repealed:

- 20 (1) Sections 171.002(b), (c), and (c-1);
- 21 (2) Section 171.0021;
- 22 (3) Section 171.003;
- 23 (4) Section 171.006;
- 24 (5) Section 171.101;
- 25 (6) Section 171.1011;
- 26 (7) Section 171.1012;
- 27 (8) Section 171.1013;

- 1           (9) Section 171.1014;
- 2           (10) Section 171.1015;
- 3           (11) Section 171.1016;
- 4           (12) Section 171.103;
- 5           (13) Section 171.105;
- 6           (14) Section 171.1055;
- 7           (15) Sections 171.106(f) and (f-1);
- 8           (16) Section 171.111;
- 9           (17) Section 171.204;
- 10          (18) Section 171.2125; and
- 11          (19) Section 171.362(f).

12           SECTION 29. Section 1(c), Chapter 286 (H.B. 4765), Acts of  
13 the 81st Legislature, Regular Session, 2009, as amended by Section  
14 37.01, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called  
15 Session, 2011, is repealed.

16           SECTION 30. Section 2, Chapter 286 (H.B. 4765), Acts of the  
17 81st Legislature, Regular Session, 2009, as amended by Section  
18 37.02, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called  
19 Session, 2011, and which amended former Subsection (d), Section  
20 171.002, Tax Code, is repealed.

21           SECTION 31. Section 3, Chapter 286 (H.B. 4765), Acts of the  
22 81st Legislature, Regular Session, 2009, as amended by Section  
23 37.03, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called  
24 Session, 2011, and which amended former Subsection (a), Section  
25 171.0021, Tax Code, is repealed.

26           SECTION 32. (a) Section 24, Chapter 1 (H.B. 3), Acts of the  
27 79th Legislature, 3rd Called Session, 2006, is repealed.



1           (b) The change in law made by this section applies only to a  
2 challenge filed on or after the effective date of this Act. A  
3 challenge filed before the effective date of this Act is governed by  
4 the law in effect on the date the challenge was filed, and the  
5 former law is continued in effect for that purpose.

6           SECTION 33. (a) The repeal of Section 171.111, Tax Code, by  
7 this Act does not affect a credit that was established under that  
8 section before the effective date of this Act.

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

17           SECTION 34. (a) This Act applies only to a report  
18 originally due on or after the effective date of this Act.

19           (b) The change in law made by this Act does not affect the  
20 obligation for or the payment, computation, and collection of the  
21 franchise tax for a report originally due before the effective date  
22 of this Act. The obligation for and the payment, computation, and  
23 collection of the franchise tax for a report originally due before  
24 the effective date of this Act is governed by the law in effect on  
25 the date the report was originally due and that law is continued in  
26 effect for those purposes.

27           SECTION 35. This Act takes effect January 1, 2014.