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H.B. No. 32

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the computation and rates of the franchise tax;
3 decreasing tax rates; amending provisions subject to a criminal
4 penalty.

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

6 SECTION 1. Sections 171.002(a) and (b), Tax Code, are
7 amended to read as follows:

8 (a) Subject to Sections 171.003, 171.004, 171.007, and
9 171.1016 and except as provided by Subsection (b), the rate of the
10 franchise tax is 0.75 [~~one~~] percent of taxable margin.

11 (b) Subject to Sections 171.003, 171.004, 171.007, and
12 171.1016, the rate of the franchise tax is 0.375 [~~0.5~~] percent of
13 taxable margin for those taxable entities primarily engaged in
14 retail or wholesale trade.

15 SECTION 2. Subchapter A, Chapter 171, Tax Code, is amended
16 by adding Section 171.004 to read as follows:

17 Sec. 171.004. ADJUSTMENT OF TAX RATES. (a) Beginning in
18 2018, on January 1 of each even numbered year for which the
19 comptroller's most recent certification estimate projects state
20 tax collections not dedicated by the constitution will exceed the
21 limit on appropriations in effect for the current biennium under
22 Section 22(a), Article VIII, Texas Constitution:

23 (1) the rate of the franchise tax under Section
24 171.002(a) is adjusted by subtracting 0.15 from the rate in effect

1 on December 31 of the previous year;

2 (2) the rate of the franchise tax under Section
3 171.002(b) is adjusted by subtracting 0.075 from the rate in effect
4 on December 31 of the previous year; and

5 (3) the rate of the franchise tax under Section
6 171.1016(b)(3) is adjusted by subtracting 0.0662 from the rate in
7 effect on December 31 of the previous year.

8 (b) The tax rates determined under Subsection (a) apply to a
9 report originally due on or after the date the determination is
10 made.

11 (c) Notwithstanding Subsection (a), if an adjustment
12 otherwise required by Subsection (a) would reduce a rate of the
13 franchise tax to less than zero, the rate is instead reduced to
14 zero.

15 (d) Notwithstanding any other law, if the rates of the
16 franchise tax are reduced to zero under Subsection (a) or (c), a
17 taxable entity does not owe any tax and is not required to file a
18 report that would otherwise be originally due on or after the date
19 the rates are reduced to zero.

20 (e) The comptroller shall make the determination required
21 by Subsection (a) and may adopt rules related to making that
22 determination. The comptroller shall publish the franchise tax
23 rates determined under this section in the Texas Register and on the
24 comptroller's Internet website not later than January 15 of each
25 year.

26 (f) A determination by the comptroller under this section is
27 final and may not be appealed.

1 SECTION 3. Subchapter A, Chapter 171, Tax Code, is amended
2 by adding Section 171.007 to read as follows:

3 Sec. 171.007. COMPTROLLER TAX RATE ADJUSTMENT. (a) On the
4 date the comptroller makes the transfer of any unencumbered
5 positive balance of general revenues from a preceding biennium to
6 the economic stabilization fund as described by Section 49-g(b),
7 Article III, Texas Constitution, the comptroller shall:

8 (1) identify an amount of money equal to 25 percent of
9 those unencumbered general revenues that are not transferred under
10 that subsection;

11 (2) estimate the amount of revenue attributable to the
12 tax imposed under this chapter that would be received by the
13 comptroller during the current state fiscal biennium if the tax
14 were imposed at the rates under Sections 171.002(a) and (b) and
15 Section 171.1016 in effect on the date the estimate is made; and

16 (3) subtract the amount of money identified under
17 Subdivision (1) from the amount of revenue estimated under
18 Subdivision (2).

19 (b) If the amount of money determined under Subsection
20 (a)(3) is greater than zero, the comptroller shall determine the
21 rates for purposes of Sections 171.002(a) and (b) and Section
22 171.1016 that, if applied beginning January 1 of the current state
23 fiscal biennium, are estimated to generate the amount of money
24 determined by the comptroller under Subsection (a)(3) for that
25 biennium. In determining the rates under this subsection, the
26 comptroller shall proportionally reduce the rates under Sections
27 171.002(a) and (b) and Section 171.1016 that are in effect on the

1 date the comptroller makes the determination.

2 (c) Not later than December 15 of each odd-numbered year,
3 the comptroller shall:

4 (1) adopt the adjusted tax rates determined under
5 Subsection (b);

6 (2) publish notice of the adjusted tax rates in the
7 Texas Register; and

8 (3) provide any other notice relating to the adjusted
9 tax rates that the comptroller considers appropriate.

10 (d) The adjusted tax rates adopted by the comptroller under
11 this section apply to a report originally due on or after January 1
12 of the even-numbered year following the date the rates are adopted.

13 (e) In the state fiscal year in which the amount of money
14 determined under Subsection (a)(3) is zero or less:

15 (1) this chapter expires as provided by Section
16 171.975; and

17 (2) not later than December 15 of that year the
18 comptroller shall:

19 (A) publish notice in the Texas Register that an
20 entity previously subject to the tax imposed under this chapter is
21 no longer required to file a report or pay the tax; and

22 (B) provide any other notice relating to the
23 expiration of the tax that the comptroller considers appropriate.

24 (f) An action taken by the comptroller under this section is
25 final and may not be appealed.

26 (g) The comptroller shall adopt rules to implement this
27 section.

1 SECTION 4. Sections 171.1016(a), (b), and (e), Tax Code,
2 are amended to read as follows:

3 (a) Notwithstanding any other provision of this chapter, a
4 taxable entity whose total revenue from its entire business is not
5 more than \$20 [~~\$10~~] million may elect to pay the tax imposed under
6 this chapter in the amount computed and at the rate provided by this
7 section rather than in the amount computed and at the tax rate
8 provided by Section 171.002.

9 (b) Subject to Section 171.004, the [~~The~~] amount of the tax
10 for which a taxable entity that elects to pay the tax as provided by
11 this section is liable is computed by:

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

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

17 (3) multiplying the amount computed under Subdivision
18 (2) by the rate of 0.331 [~~0.575~~] percent or, if applicable, the
19 adjusted tax rate adopted by the comptroller under Section 171.007.

20 (e) A reference in this chapter or other law to the rate of
21 the franchise tax means, as appropriate:

22 (1) [~~7~~] the rate under Section 171.002 or, for a
23 taxable entity that elects to pay the tax as provided by this
24 section, the rate under this section; or

25 (2) the adjusted rates under Section 171.007.

26 SECTION 5. Chapter 171, Tax Code, is amended by adding
27 Subchapter Z to read as follows:

1 SUBCHAPTER Z. EXPIRATION

2 Sec. 171.975. EXPIRATION. This chapter expires on December
3 31 of the year in which the amount of money determined by the
4 comptroller under Section 171.007(a)(3) is zero or less.

5 SECTION 6. (a) Chapter 171, Tax Code, and Subtitle B,
6 Title 2, Tax Code, continue to apply to audits, deficiencies,
7 redeterminations, and refunds of any tax due or collected under
8 Chapter 171 until barred by limitations.

9 (b) The expiration of Chapter 171, Tax Code, does not
10 affect:

11 (1) the status of a taxable entity that has had its
12 corporate privileges, certificate of authority, certificate of
13 organization, certificate of limited partnership, corporate
14 charter, or registration revoked, suit filed against it, or a
15 receiver appointed under Subchapter F, G, or H of that chapter;

16 (2) the ability of the comptroller of public accounts,
17 secretary of state, or attorney general to take action against a
18 taxable entity under Subchapter F, G, or H of that chapter for
19 actions that took place before the chapter expired; or

20 (3) the right of a taxable entity to contest a
21 forfeiture, revocation, lawsuit, or appointment of a receiver under
22 Subchapter F, G, or H of that chapter.

23 SECTION 7. The comptroller of public accounts shall study
24 and report to the legislature on the impact of this Act on the rate
25 of the franchise tax and what further reductions in the rate of that
26 tax may be made following a review of existing exemptions and
27 credits from the franchise tax. The comptroller shall provide the

1 report to the legislature not later than December 31, 2016.

2 SECTION 8. This Act applies only to a report originally due
3 on or after the effective date of this Act.

4 SECTION 9. This Act takes effect January 1, 2016.