

BILL ANALYSIS

Senate Research Center
85R23415 E

H.B. 28
By: Bonnen, Dennis et al. (Nelson)
Finance
5/17/2017
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that the franchise tax generates insufficient revenue for the state given the burdens it imposes on businesses in Texas. H.B. 28 seeks to address concerns about those burdens by providing for the reduction or elimination of the franchise tax, as applicable, under certain circumstances.

H.B. 28 amends current law relating to the use of certain surplus state revenue, in certain circumstances, to adjust franchise tax rates to phase out the franchise tax and to the expiration of that tax.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas comptroller of public accounts in SECTION 2 (Section 171.004, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 171.002(a) and (b), Tax Code, to provide that Subsections (a) and (b) are subject to Section 171.004.

SECTION 2. Amends Subchapter A, Chapter 171, Tax Code, by adding Section 171.004, as follows:

Sec. 171.004. ADJUSTMENT OF TAX RATES. (a) Requires the Texas comptroller of public accounts (comptroller), as soon as practical after September 1, but before December 15, of each odd-numbered year, to determine:

(1) the ending balance of general revenue related funds available for certification for the preceding state fiscal biennium; and

(2) the tax rates for purposes of Sections 171.002(a) and (b) and Section 171.1016 (E-Z Computation and Rate) that, if applied beginning January 1 of the next year, are estimated to yield an amount of revenue for the state fiscal biennium in which the determination is made equal to the lesser of the ending balance determined under Subdivision (1) or \$3.5 billion.

(b) Requires the comptroller, not later than December 15 of each odd-numbered year, to:

(1) determine certain adjusted tax rates; and

(2) except as provided by Subsection (e) adopt the adjusted tax rates determined under Subdivision (1), publish notice of the adjusted tax rates in the Texas Register, and provide any other notice relating to the adjusted tax rates that the comptroller considers appropriate.

(c) Requires the comptroller, in determining the tax rates under Subsection (a)(2) and the adjusted tax rates under Subsection (b)(1), to ensure that the adjusted tax

rates reflect proportional reductions to the tax rates in effect under Sections 171.002(a) and (b) and Section 171.1016 at the time the determinations are made.

(d) Provides that the adjusted tax rates adopted under Subsection (b) apply to a report originally due on a certain date and are considered for purposes of this chapter (Franchise Tax) to be the rates provided by and imposed under Section 171.002 (Rates; Computation of Tax) or 171.1016, as applicable.

(e) Provides that in the state fiscal year in which the adjusted tax rates determined under Subsection (b)(1) are less than 15 percent of the tax rates under Sections 171.002(a) and (b) and Section 171.1016 in effect on September 1, 2017:

(1) this chapter expires on December 31 of that year; and

(2) not later than December 15 of that year the comptroller is required to publish certain notice relating to an entity previously subject to the imposed tax in the Texas Register and provide any other notice relating to the expiration of the tax that the comptroller considers appropriate.

(f) Provides that an action taken by the comptroller is final and prohibits it from being appealed.

(g) Requires the comptroller to adopt rules to implement this section.

SECTION 3. Amends Sections 171.1016(b) and (e), Tax Code, as follows:

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

(1) and (2) makes no changes to these subdivisions; and

(3) multiplying the amount computed under Subdivision (2) by the rate of 0.331 percent or, if applicable, an adjusted tax rate determined under Section 171.004.

(e) Provides that a reference in this chapter or other law to the rate of the franchise tax means, as appropriate:

(1) creates this subdivision from existing text and makes nonsubstantive changes; or

(2) the adjusted rates under Section 171.004.

SECTION 4. Amends Chapter 171, Tax Code, by adding Subchapter Z, as follows:

SUBCHAPTER Z. EXPIRATION

Sec. 171.9321. EXPIRATION. Provides that this chapter expires on the date provided by Section 171.004(e)(1).

SECTION 5. (a) Provides that after Chapter 171, Tax Code, expires as provided by Subchapter Z, Chapter 171, Tax Code, as added by this Act:

(1) the provisions of former Chapter 171 and the provisions of Subtitle B (Enforcement and Collection), Title 2 (State Taxation), Tax Code, continue to apply to audits, deficiencies, redeterminations, and refunds of any tax due or collected under former Chapter 171 until barred by limitations; and

(2) former Sections 171.206 (Confidential Information) through 171.210 (Permitted Use of Confidential Information), Tax Code, continue to apply to information described by those sections.

(b) Provides that the expiration of Chapter 171, Tax Code, does not affect the status of certain taxable entities, the ability of the comptroller, secretary of state, or Texas attorney general to take certain action against a taxable entity, or the right of a taxable entity to contest certain actions.

SECTION 6. Provides that this Act applies only to a report originally due on or after January 1, 2020.

SECTION 7. Effective date: September 1, 2019.