

By: Bonnen of Brazoria, et al.

H.B. No. 28

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the use of certain surplus state revenue, in certain
3 circumstances, to adjust franchise tax rates to phase out the
4 franchise tax and to the expiration of that tax.

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, and 171.1016 and
9 except as provided by Subsection (b), the rate of the franchise tax
10 is 0.75 percent of taxable margin.

11 (b) Subject to Sections 171.003, 171.004, and 171.1016, the
12 rate of the franchise tax is 0.375 percent of taxable margin for
13 those taxable entities primarily engaged in retail or wholesale
14 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) As soon as
18 practical after September 1, but before December 15, of each
19 odd-numbered year, the comptroller shall determine:

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

23 (2) the tax rates for purposes of Sections 171.002(a)
24 and (b) and Section 171.1016 that, if applied beginning January 1 of

1 the next year, are estimated to yield an amount of revenue for the
2 state fiscal biennium in which the determination is made equal to
3 the lesser of:

4 (A) the ending balance determined under
5 Subdivision (1); or

6 (B) \$3.5 billion.

7 (b) Not later than December 15 of each odd-numbered year,
8 the comptroller shall:

9 (1) determine the adjusted tax rates, which are the
10 tax rates under Sections 171.002(a) and (b) and Section 171.1016 in
11 effect on the date the comptroller makes the determination under
12 Subsection (a)(2) less the tax rates determined under Subsection
13 (a)(2); and

14 (2) except as provided by Subsection (e):

15 (A) adopt the adjusted tax rates determined under
16 Subdivision (1);

17 (B) publish notice of the adjusted tax rates in
18 the Texas Register; and

19 (C) provide any other notice relating to the
20 adjusted tax rates that the comptroller considers appropriate.

21 (c) In determining the tax rates under Subsection (a)(2) and
22 the adjusted tax rates under Subsection (b)(1), the comptroller
23 shall ensure that the adjusted tax rates reflect proportional
24 reductions to the tax rates in effect under Sections 171.002(a) and
25 (b) and Section 171.1016 at the time the determinations are made.

26 (d) The adjusted tax rates adopted under Subsection (b):

27 (1) apply to a report originally due on or after

1 January 1 of the even-numbered year following the date the rates are
2 adopted; and

3 (2) are considered for purposes of this chapter to be
4 the rates provided by and imposed under Section 171.002 or
5 171.1016, as applicable.

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

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

12 (2) not later than December 15 of that year the
13 comptroller shall:

14 (A) publish notice in the Texas Register that an
15 entity previously subject to the tax imposed under this chapter is
16 not required to file or pay the tax in connection with a report that
17 would otherwise be originally due on or after January 1 of the next
18 year; and

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

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

23 (g) The comptroller shall adopt rules to implement this
24 section.

25 SECTION 3. Sections 171.1016(b) and (e), Tax Code, are
26 amended to read as follows:

27 (b) The amount of the tax for which a taxable entity that

1 elects to pay the tax as provided by this section is liable is
2 computed by:

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

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

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

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

13 (1) ~~[r]~~ the rate under Section 171.002 or, for a
14 taxable entity that elects to pay the tax as provided by this
15 section, the rate under this section; or

16 (2) the adjusted rates under Section 171.004.

17 SECTION 4. Chapter 171, Tax Code, is amended by adding
18 Subchapter Z to read as follows:

19 SUBCHAPTER Z. EXPIRATION

20 Sec. 171.9321. EXPIRATION. This chapter expires on the
21 date provided by Section 171.004(e)(1).

22 SECTION 5. (a) After Chapter 171, Tax Code, expires as
23 provided by Subchapter Z, Chapter 171, Tax Code, as added by this
24 Act:

25 (1) the provisions of former Chapter 171 and the
26 provisions of Subtitle B, Title 2, Tax Code, continue to apply to
27 audits, deficiencies, redeterminations, and refunds of any tax due

1 or collected under former Chapter 171 until barred by limitations;
2 and

3 (2) former Sections 171.206 through 171.210, Tax Code,
4 continue to apply to information described by those sections.

5 (b) The expiration of Chapter 171, Tax Code, does not
6 affect:

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

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

17 (3) the right of a taxable entity to contest a
18 forfeiture, revocation, lawsuit, or appointment of a receiver under
19 former Subchapter F, G, or H of that chapter.

20 SECTION 6. This Act applies only to a report originally due
21 on or after January 1, 2020.

22 SECTION 7. This Act takes effect September 1, 2019.