

By: Bonnen of Brazoria, et al.

H.B. No. 28

Substitute the following for H.B. No. 28:

By: Shine

C.S.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.