

By: Bonnen of Brazoria

H.B. No. 28

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the use of certain surplus state revenue to phase out  
3 the franchise tax and to the expiration of that tax.

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

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

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

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

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

16 Sec. 171.004. ADJUSTMENT OF TAX RATES. (a) As soon as  
17 practical after September 1, but before December 15, of each  
18 odd-numbered year, the comptroller shall determine:

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

22 (2) the tax rates for purposes of Sections 171.002(a)  
23 and (b) and Section 171.1016 that, if applied beginning January 1 of  
24 the next year, are estimated to yield an amount of revenue for the

1 state fiscal biennium in which the determination is made equal to  
2 the lesser of:

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

5 (B) \$3.5 billion.

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

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

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

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

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

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

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

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

26 (1) apply to a report originally due on or after  
27 January 1 of the even-numbered year following the date the rates are

1 adopted; and

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

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

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

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

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

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

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

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

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

26 (b) The amount of the tax for which a taxable entity that  
27 elects to pay the tax as provided by this section is liable is

1 computed by:

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

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

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

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

12 (1) [~~7~~] the rate under Section 171.002 or, for a  
13 taxable entity that elects to pay the tax as provided by this  
14 section, the rate under this section; or

15 (2) the adjusted rates under Section 171.004.

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

18 SUBCHAPTER Z. EXPIRATION

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

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

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

1 and

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

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

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

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

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

19 SECTION 6. This Act applies only to a report originally due  
20 on or after January 1, 2018.

21 SECTION 7. This Act takes effect September 1, 2017.