

By: Nelson, et al.

S.B. No. 17

A BILL TO BE ENTITLED

AN ACT

relating to the decrease of the rates of the franchise tax under certain circumstances and the expiration of that tax.

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

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

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

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

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

Sec. 171.004. ADJUSTMENT OF TAX RATES. (a) In this section:

(1) "Biennial revenue estimate" means the estimate of anticipated revenue to this state for the succeeding biennium that the comptroller prepares in accordance with Section 49a(a), Article III, Texas Constitution.

(2) "Current biennium" means the state fiscal biennium in which a biennial revenue estimate is submitted to the governor and legislature.

1 (3) "Succeeding biennium" means the state fiscal
2 biennium beginning after the current biennium.

3 (b) The comptroller shall determine and include with the
4 biennial revenue estimate:

5 (1) the amount of total general revenue-related funds
6 that would be available for certification for the succeeding
7 biennium assuming a franchise tax rate adjustment under this
8 section does not take effect in that biennium;

9 (2) the percentage change between the amount of total
10 general revenue-related funds available for certification for the
11 current biennium, as provided by the biennial revenue estimate, and
12 the amount provided by Subdivision (1) for the succeeding biennium;

13 (3) if the percentage change under Subdivision (2) is
14 greater than five percent, the amount of total general
15 revenue-related funds that would be available for certification for
16 the succeeding biennium assuming the franchise tax rate adjustment
17 under this section takes effect in the succeeding biennium; and

18 (4) if the percentage change under Subdivision (2) is
19 greater than five percent, the percentage change between the amount
20 of total general revenue-related funds available for certification
21 for the current biennium, as provided by the biennial revenue
22 estimate, and the amount provided by Subdivision (3) for the
23 succeeding biennium.

24 (c) If the percentage change determined under Subsection
25 (b)(2) is greater than five percent, the comptroller shall
26 determine the amount of revenue available for franchise tax
27 reduction, which is computed as follows:

1 FTR = 0.5 X (SBGR - (CBGR X 1.05))

2 where:

3 "FTR" is the amount of revenue available for franchise tax
4 reduction;

5 "SBGR" is the amount provided by Subsection (b)(1) for the
6 succeeding biennium; and

7 "CBGR" is the amount of total general revenue-related funds
8 available for certification for the current biennium, as provided
9 by the biennial revenue estimate.

10 (d) This subsection applies only if the percentage change
11 determined under Subsection (b)(2) is greater than five percent.
12 Not later than the last day of a state fiscal biennium, the
13 comptroller shall determine the rates for purposes of Sections
14 171.002(a) and (b) and Section 171.1016 that, if effective
15 beginning January 1 of the even-numbered year occurring during the
16 succeeding biennium, are estimated to reduce the amount of revenue
17 collected under this chapter for the succeeding biennium, as
18 compared to the amount of revenue that would be collected if the
19 rates then in effect remained in effect, by the amount of revenue
20 available for franchise tax reduction determined under Subsection
21 (c). In determining the rates under this subsection, the
22 comptroller shall proportionally reduce the rates under Sections
23 171.002(a) and (b) and Section 171.1016 that are in effect on the
24 date the comptroller makes the determination.

25 (e) Not later than the last day of a state fiscal biennium,
26 the comptroller shall:

27 (1) adopt the adjusted tax rates determined under

1 Subsection (d), if applicable;

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

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

6 (f) The tax rates adopted under Subsection (e):

7 (1) apply to a report originally due on or after
8 January 1 of the even-numbered year described by Subsection (d);
9 and

10 (2) are considered for purposes of this chapter to be
11 the rates provided by and imposed under Section 171.002 or
12 171.1016, as applicable.

13 (g) If the percentage change determined under Subsection
14 (b)(2) is not greater than five percent, the rates of the franchise
15 tax in effect when the biennial revenue estimate is submitted to the
16 governor and legislature remain in effect for the succeeding
17 biennium unless modified by other law.

18 (h) Notwithstanding Subsection (d), if an adjustment
19 otherwise required by that subsection would reduce a rate of the
20 franchise tax to less than zero, the rate is instead reduced to
21 zero.

22 (i) Notwithstanding any other law, if the rates of the
23 franchise tax are reduced to zero under Subsection (d) or (h), a
24 taxable entity does not owe any tax and is not required to file a
25 report that would otherwise be originally due on or after the date
26 those rates are reduced to zero.

27 (j) The comptroller may adopt rules related to making the

1 determinations required by this section.

2 (k) In the state fiscal year in which the rates of the
3 franchise tax are reduced to zero under Subsection (d) or (h):

4 (1) this chapter expires as provided by Section
5 171.9321; and

6 (2) not later than January 15 of that year the
7 comptroller shall:

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

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

13 (1) An action taken by the comptroller under this section is
14 final and may not be appealed.

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

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

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

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

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

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

3 (1)[7] the rate under Section 171.002 or, for a
4 taxable entity that elects to pay the tax as provided by this
5 section, the rate under this section; or

6 (2) the adjusted rates under Section 171.004.

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

9 SUBCHAPTER Z. EXPIRATION

10 Sec. 171.9321. EXPIRATION. This chapter expires on
11 December 31 of the year in which the rates of the franchise tax
12 under Sections 171.002 and 171.1016 are reduced to zero under
13 Section 171.004(d) or (h).

14 SECTION 5. (a) After Chapter 171, Tax Code, expires as
15 provided by Subchapter Z, Chapter 171, Tax Code, as added by this
16 Act:

17 (1) Chapter 171 and Subtitle B, Title 2, Tax Code,
18 continue to apply to audits, deficiencies, redeterminations, and
19 refunds of any tax due or collected under Chapter 171 until barred
20 by limitations; and

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

23 (b) The expiration of Chapter 171, Tax Code, does not
24 affect:

25 (1) the status of a taxable entity that has had its
26 corporate privileges, certificate of authority, certificate of
27 organization, certificate of limited partnership, corporate

1 charter, or registration revoked, a suit filed against it, or a
2 receiver appointed under Subchapter F, G, or H of that chapter;

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

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

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

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